MONTANA LEGISLATIVE HISTORY

Chapter 519 19 83

Bill H 493 S _____ Original bill & history ✓ C

H. Committee on State Administration			S. Committee on State Administration		
Hearing Date(s)	Jan 31	✓ C	Hearing Date(s)	Mar 07	✓ C
	Feb 10	✓ C		Mar 24	✓ C
		C			C
		C			C
Date Out	Feb 10	✓ C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HEARING: 2/4/83
REPORT: 02/04/83, DO PASS
2ND READING: 02/07/83, DO PASS AYES: 87; NAYS: 1
3RD READING: 02/09/83, DO PASS AYES: 93; NAYS: 3

TRANSMITTED TO SENATE: 2/9/83
REFERRED TO COMMITTEE ON TAXATION: 02/10/83
HEARING: 3/7/83
REPORT: 03/12/83, BE CONCURRED IN
2ND READING: 03/15/83 AYES: 49; NAYS: 0
3RD READING: 03/17/83 AYES: 47; NAYS: 0

RETURNED TO HOUSE: 03/17/83

TRANSMITTED TO GOVERNOR: 03/25/83
SIGNED: 03/29/83, CHAPTER 278

HB 493 -- YARDLEY, DOVER -- TO GENERALLY REVISE THE LAWS GOVERNING PROCUREMENT OF SUPPLIES AND SERVICES FOR STATE AGENCIES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF ADMINISTRATION; AMENDING ....
BY REQUEST OF: THE DEPARTMENT OF ADMINISTRATION

INTRODUCED: 01/25/83
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 01/25/83
HEARING: 1/31/83
REPORT: 02/11/83, DO PASS, AS AMENDED
2ND READING: 02/15/83, DO PASS AYES: 90; NAYS: 0
3RD READING: 02/17/83, DO PASS AYES: 98; NAYS: 2

TRANSMITTED TO SENATE: 2/17/83
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 02/18/83
HEARING: 3/7/83
REPORT: 03/25/83, BE CONCURRED IN, AS AMENDED
2ND READING: 03/26/83 AYES: 48; NAYS: 0
3RD READING: 03/28/83 AYES: 45; NAYS: 2

RETURNED TO HOUSE WITH AMENDMENTS: 3/28/83
2ND READING: 04/04/83, BE CONCURRED IN AYES: 79; NAYS: 4
3RD READING: 04/05/83, BE CONCURRED IN AYES: 94; NAYS: 4

TRANSMITTED TO GOVERNOR: 04/13/83
SIGNED: 04/15/83, CHAPTER 519

HB 494 -- HANNAH, FAGG, J. JENSEN -- TO ALLOW A PERSON MAKING AN ARREST TO BRING THE ARRESTED PERSON BEFORE A JUDGE OF THE COUNTY NEAREST TO THE COUNTY IN WHICH THE WARRANT WAS ISSUED IF THE ISSUING JUDGE IS ABSENT OR UNABLE TO ACT; AMENDING ....

INTRODUCED: 01/25/83
REFERRED TO COMMITTEE ON JUDICIARY: 01/25/83
HEARING: 2/9/83
REPORT: 02/09/83, DO NOT PASS
BILL KILLED: 02/10/83

HB 495 -- HANNAH, FAGG, J. JENSEN -- PROVIDING A TERM OF 4 YEARS FOR APPOINTED CITY JUDGES; AMENDING ....

HOUSE BILL NO. 493

INTRODUCED BY YARDLEY

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

IN THE HOUSE

January 25, 1983	Introduced and referred to Committee on State Administration.
January 27, 1983	On motion by chief sponsor Senator Dover was added as a sponsor to the bill.
February 11, 1983	Committee recommend bill do pass as amended. Report adopted.
	Statement of Intent attached.
February 14, 1983	Bill printed and placed on members' desks.
February 15, 1983	Second reading, do pass.
February 16, 1983	Considered correctly engrossed.
February 17, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 18, 1983	Introduced and referred to Committee on State Administration.
March 25, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 26, 1983	Second reading, concurred in.

March 28, 1933	Third reading, concurred in. Ayes, 45; Noes, 2.

IN THE HOUSE

March 28, 1983	Returned to House with amendments.
April 1, 1983	Second reading, pass consideration.
April 4, 1983	Second reading, amendments concurred in.
April 5, 1983	Third reading, amendments concurred in.
	Sent to enrolling.
	Reported correctly enrolled.

House BILL NO. 493

INTRODUCED BY Yardley

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS GOVERNING PROCUREMENT OF SUPPLIES AND SERVICES FOR STATE AGENCIES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTIONS 18-4-104, 18-7-104, 18-7-105, AND 87-1-209, MCA; AND REPEALING SECTIONS 18-4-101, 18-4-102, 18-4-201 THROUGH 18-4-203, 18-4-211 THROUGH 18-4-214, 18-7-102, 18-7-103, AND 18-7-111 THROUGH 18-7-113, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 46] may be cited as the "Montana Procurement Act".

NEW SECTION. Section 2. Purpose. The underlying purposes and policies of [sections 1 through 46] are to:

(1) simplify, clarify, and modernize the law governing procurement by the state of Montana;

(2) permit the continued development of procurement policies and practices;

(3) make as consistent as possible the procurement laws among the various jurisdictions;

(4) provide for increased public confidence in the procedures followed in public procurement;

(5) ensure the fair and equitable treatment of all persons who deal with the procurement system of the state;

(6) provide increased economy in state procurement activities and maximize to the fullest extent practicable the purchasing value of public funds of the state;

(7) foster effective, broad-based competition within the free enterprise system; and

(8) provide safeguards for the maintenance of a procurement system of quality and integrity.

NEW SECTION. Section 3. Definitions. In [sections 1 through 46], unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

(1) "Business" means a corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity.

(2) "Change order" means a written order, signed by an authorized department representative, directing the contractor to make changes which the changes clause of the contract authorizes the department to order without the consent of the contractor.

(3) "Contract" means all types of state agreements, regardless of what they may be called, for the procurement

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or disposal of supplies or services.

(4) "Contract modification" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract accomplished by mutual action of the parties to the contract.

(5) "Contractor" means a person having a contract with a governmental body.

(6) "Data" means recorded information, regardless of form or characteristic.

(7) "Department" means the department of administration.

(8) "Designee" means a duly authorized representative of a person holding a superior position.

(9) "Director" means the director of the department of administration.

(10) "Employee" means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for a governmental body.

(11) "Governmental body" means a department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other entity, instrumentality, or official of the executive, legislative, or judicial branch of this state, including the

board of regents and the Montana university system.

(12) "Grant" means the furnishing by the federal government of assistance, whether financial or otherwise, to a person or agency to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies or services. A contract resulting from such an award is not a grant but a procurement contract.

(13) "Person" means any business, individual, union, committee, club, other organization, or group of individuals.

(14) "Printing" means the reproduction of an image from a printing surface generally made by a contact impression that causes a transfer of ink or the reproduction of an impression by a photographic process and includes graphic arts, typesetting, binding, and other operations necessary to produce a finished printed product. Printing does not include rebinding or repair by a library or an office, department, board, or commission thereof of books, journals, pamphlets, magazines, and literary articles held as a part of its library collection.

(15) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. It also includes all functions that pertain to the obtaining of any supply or service, including description of

requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(16) "Procurement officer" means any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of his authority.

(17) "Purchasing agency" means any governmental body, other than the department, which is authorized by [sections 1 through 46] or its implementing rules or by way of delegation from the director to enter into contracts.

(18) "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. The term does not include consulting services as defined in 18-8-102, those services listed in 18-8-103, employment agreements or collective bargaining agreements, the provision by private providers of human services regulated by a state agency, or services related to construction contracts.

(19) "Supplies" means all property except as otherwise provided by law, including but not limited to equipment, materials, printing, and commodities, and excluding land or any interest in land.

(20) "Using agency" means any governmental body of the state which utilizes any supplies or services procured under [sections 1 through 46].

NEW SECTION. Section 4. Supplementary general principles of law applicable -- requirement of good faith. (1) Unless displaced by the particular provisions of [sections 1 through 46], the principles of law and equity, including the Uniform Commercial Code, the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy, supplement the provisions of [sections 1 through 46], except that writs of mandamus and prohibition issued pursuant to Title 27, chapters 26 and 27, may not be used as a remedy for violations of [sections 1 through 46].

(2) [Sections 1 through 46] require all parties involved in the negotiation, performance, or administration of state contracts to act in good faith.

NEW SECTION. Section 5. Public access to procurement information -- records -- retention. (1) Procurement information is a public writing and must be available to the public as provided in 2-6-102.

(2) All procurement records shall be retained and disposed of in accordance with the state records management program.

(3) Written determinations required by [sections 1

through 46] must be retained in the appropriate official contract file of the department or the purchasing agency administering the procurement in accordance with the state records management program.

NEW SECTION. Section 6. General procurement authority and duties of department -- rules. (1) Except as otherwise provided in [sections 1 through 46], the department shall adopt rules, consistent with [sections 1 through 46], governing the procurement and disposal of any and all supplies and services to be procured by the state. The department shall consider and decide matters of policy within the provisions of [sections 1 through 46]. The department may audit and monitor the implementation of its rules and the requirements of [sections 1 through 46].

(2) Except as otherwise specifically provided by law, the department shall, in accordance with its rules:

(a) procure or supervise the procurement of all supplies and services needed by the state;

(b) sell, trade, or otherwise dispose of surplus supplies belonging to the state; and

(c) establish and maintain programs for the inspection, testing, acceptance, and inventory of supplies and services.

(3) Nothing contained herein shall preclude the state from doing its own printing on its own printing facilities.

NEW SECTION. Section 7. Delegation of authority by department. Subject to the rules of the department, the director may delegate procurement authority to designees or to any state department, agency, or official.

NEW SECTION. Section 8. State procurement rules -- delegation -- existing rights. (1) Rules shall be adopted by the department in accordance with the applicable provisions of Title 2, chapter 4.

(2) The department may not delegate its power to adopt rules.

(3) No rule may change a commitment, right, or obligation of the state or of a contractor under a contract in existence on the effective date of such rule.

NEW SECTION. Section 9. Authority to remove or suspend from vendors' list. (1) The department may remove a person for cause from consideration for award of contracts. The removal may not be for a period of more than 3 years.

(2) The department may suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in activities that may lead to removal. The suspension may not be for a period exceeding 3 months unless an indictment has been issued for an offense that would be a cause for removal under subsection (3), in which case the suspension must, at the request of the attorney general, remain in effect until

after the trial of the suspended person. The authority to remove or suspend must be exercised in accordance with rules adopted by the department.

(3) The causes for removal or suspension include the following:

(a) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract;

(b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity which currently, seriously, and directly affects responsibility as a state contractor;

(c) conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(d) violation of contract provisions, as set forth in subsection (3)(d)(i) and (3)(d)(ii), of a character which is regarded by the department to be so serious as to justify removal action:

(i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(ii) a recent record of failure to perform or of

unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for removal; and

(e) any other cause the department determines to be so serious and compelling as to affect responsibility as a state contractor, including removal by another governmental entity for any cause listed in the department's rules.

(4) The department shall issue a written decision to remove or suspend, stating the reasons for the action taken. A copy of the decision must be mailed or otherwise furnished immediately to the person involved.

NEW SECTION. Section 10. Remedies prior to and after award. (1) The provisions of this section apply whenever it is determined administratively or upon judicial review that a solicitation or award of a contract is in violation of law.

(2) If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, the solicitation or proposed award must be:

(a) canceled; or

(b) revised to comply with the law.

(3) (a) If after an award it is determined that a solicitation or award of a contract is in violation of law

and the person awarded the contract has not acted fraudulently or in bad faith, the contract may be:

(i) ratified and affirmed, provided it is determined that doing so is in the best interests of the state; or

(ii) terminated, and the person awarded the contract must be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to the termination.

(b) If after an award it is determined that a solicitation or award of a contract is in violation of law and the person awarded the contract has acted fraudulently or in bad faith, the contract may be:

(i) declared void; or

(ii) ratified and affirmed if such action is in the best interests of the state, without prejudice to the state's rights to appropriate damages.

NEW SECTION. Section 11. Collection of data concerning public procurement. All using agencies shall cooperate with the department in the preparation of statistical data concerning the procurement, usage, and disposition of all supplies and services, and the department may employ trained personnel as necessary to carry out this function. All using agencies shall furnish such reports as the department may require concerning usage, needs, and stocks on hand, and the department may prescribe forms to be

used by the using agencies in requisitioning, ordering, and reporting of supplies and services.

NEW SECTION. Section 12. Definitions. As used in [sections 12 through 29], the following definitions apply:

(1) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of [sections 1 through 46], and a fee, if any.

(2) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(3) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

(4) "Purchase description" means the words used in a solicitation to describe the supplies or services to be

purchased and includes specifications attached to or made a part of the solicitation.

(5) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(6) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance.

(7) "Responsive bidder" means a person who has submitted a bid which conforms in all material respects to the invitation for bids.

NEW SECTION. Section 13. Methods of source selection. Unless otherwise authorized by law, all state contracts for supplies and services must be awarded by competitive sealed bidding, pursuant to [section 14], except as provided in 18-4-104; Title 18, chapter 5; Title 18, chapter 6; and [sections 15 through 17]. Supplies or services offered for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or services are regulated by the public service commission or other governmental authority.

NEW SECTION. Section 14. Competitive sealed bidding. (1) An invitation for bids must be issued and must include a purchase description and conditions applicable to the

procurement.

(2) Adequate public notice of the invitation for bids must be given a reasonable time prior to the date set forth therein for the opening of bids, in accordance with rules adopted by the department. Notice may include publication in a newspaper of general circulation at a reasonable time prior to bid opening.

(3) Bids must be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and such other relevant information as may be specified by rule, together with the name of each bidder, must be recorded. The record must be open to public inspection. After the time of award, all bids and bid documents must be open to public inspection in accordance with the provisions of 2-6-102.

(4) Bids must be unconditionally accepted without alteration or correction, except as authorized in [sections 1 through 46]. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life-cycle costs. The

invitation for bids shall set forth the evaluation criteria to be used. Only criteria set forth in the invitation for bids may be used in bid evaluation.

(5) Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on such bid mistakes may be permitted in accordance with rules adopted by the department. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the state or fair competition may be permitted. Except as otherwise provided by rule, all decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes must be supported by a written determination made by the department.

(6) The contract must be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, including the preferences established by Title 18, chapter 1, part 1. If all bids exceed available funds as certified by the appropriate fiscal officer and the low responsive and responsible bid does not exceed such funds by more than 5%, the director or the head of a purchasing agency is authorized, in situations where time or economic considerations preclude resolicitation of a reduced scope,

to negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder in order to bring the bid within the amount of available funds.

(7) When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers, to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

NEW SECTION. Section 15. Competitive sealed proposals. (1) When, under rules adopted by the department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the state, a contract may be entered into by competitive sealed proposals. The department may provide by rule that it is either not practicable or not advantageous to the state to procure specified types of supplies and services by competitive sealed bidding.

(2) Proposals must be solicited through a request for proposals.

(3) Adequate public notice of the request for

proposals must be given in the same manner as provided in [section 14(2)].

(4) Proposals must be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals must be prepared in accordance with rules adopted by the department and must be open for public inspection after contract award.

(5) The request for proposals must state the relative importance of price and other evaluation factors.

(6) As provided in the request for proposals and under rules adopted by the department, discussions may be conducted with responsible offerors who submit apparently responsive proposals for the purpose of clarification, to assure full understanding of and responsiveness to the solicitation requirements. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted, after submissions and prior to award, for the purpose of obtaining best and final offers. In conducting discussions, there may be no disclosure of any information derived from proposals submitted by competing offerors. The department may require the submission of cost or pricing data in connection with an award under this section.

(7) The award must be made to the responsible offeror whose proposal is determined in writing to be the most

advantageous to the state, taking into consideration price, including the preference in 18-1-102, and the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation. The contract file shall contain the basis on which the award is made.

NEW SECTION. Section 16. Small purchases. Any procurement not exceeding the amount established by rule may be made in accordance with small purchase procedures established by the department. Procurement requirements may not be artificially divided so as to constitute a small purchase under this section.

NEW SECTION. Section 17. Sole source procurement. A contract may be awarded for a supply or service item without competition when, under rules adopted by the department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines in writing that there is only one source for the required supply or service item. The department may require the submission of cost or pricing data in connection with an award under this section.

NEW SECTION. Section 18. Cancellation of invitations for bids or requests for proposals. An invitation for bids, a request for proposals, or other solicitation may be canceled or any or all bids or proposals may be rejected in

whole or in part, as may be specified in the solicitation, when it is in the best interests of the state. The reasons therefor must be made part of the contract file.

NEW SECTION. Section 19. Nonresponsibility of bidders and offerors -- nondisclosure. (1) A written determination of nonresponsibility of a bidder or offeror must be made in accordance with rules adopted by the department. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

(2) Information furnished by a bidder or offeror pursuant to this section may not be disclosed outside of the department or the purchasing agency without prior written consent by the bidder or offeror.

NEW SECTION. Section 20. Prequalification of suppliers. Prospective suppliers may be prequalified for particular types of supplies and services. Solicitation mailing lists of potential contractors must include but not be limited to such prequalified suppliers.

NEW SECTION. Section 21. Types of contracts. Subject to the limitations of this section, any type of contract that will promote the best interests of the state may be used, except that the use of a cost-plus-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be

used only when a determination is made in writing that such contract is likely to be less costly to the state than any other type or that it is impracticable to obtain the supplies or services required except under such a contract.

NEW SECTION. Section 22. Approval of accounting system. Except with respect to firm fixed-price contracts, no contract type may be used unless it has been determined in writing by the department that:

(1) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

(2) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

NEW SECTION. Section 23. Contract performance security. (1) For state contracts for the procurement of supplies and services, the department may in its discretion require the filing of security to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, materialmen, mechanics, and subcontractors.

(2) If contract performance security is required under subsection (1), the following types of security may be deposited with the state:

(a) a good and sufficient bond with a licensed surety

company as surety;

(b) an irrevocable letter of credit in accordance with the provisions of Title 30, chapter 5, part 1;

(c) lawful money of the United States;

(d) a cashier's check, certified check, bank money order, or bank draft, drawn or issued by any banking corporation incorporated under the laws of Montana or by a banking association located in Montana; or

(e) certificates of deposit or money market certificates issued by any bank or savings and loan association licensed to do business in Montana.

(3) The amount of the security mentioned above must be set in an amount considered by the department to be sufficient to cover the risk involved to the state, except that the same shall not be less than 25% of the total contract price, and must be payable to the state of Montana. Any contract security requirements must be included in the invitations for bids or requests for proposals.

(4) The provisions of Title 18, chapter 2, parts 2 and 3, do not apply to procurements under [sections 1 through 46].

NEW SECTION. Section 24. Contracts — terms, extensions, and time limits. (1) Unless otherwise provided by law, no contract, lease, or rental agreement for supplies or services may be made for a longer period than 3 years;

however, the department may contract for the lease or purchase of telecommunications equipment and systems and data processing equipment for a period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed, notwithstanding the time limits stated in this section, if the terms of the extension or renewal, if any, are included in the solicitation and funds are available for the first fiscal period at the time of the agreement. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds therefor.

(2) Prior to the extension or renewal of a contract, it must be determined in writing that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled.

NEW SECTION. Section 25. Right to inspect plant. The state may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor that is related to the performance of any

contract awarded or to be awarded by the state.

NEW SECTION. Section 26. Finality of determinations. The determinations required by [sections 14(5), 15(1), 15(7), 17, 18, 19, 21, 22, and 24(2)] are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

NEW SECTION. Section 27. Reporting of anticompetitive practices. If for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the attorney general by the department.

NEW SECTION. Section 28. Retention of procurement records. All procurement records must be retained, managed, and disposed of in accordance with Title 2, chapter 6.

NEW SECTION. Section 29. Records of sole source procurements. (1) The department shall maintain or shall require the head of a purchasing agency to maintain a record listing all contracts made under [section 17] for a minimum of 4 years. The record must contain:

(a) each contractor's name;

(b) the amount and type of each contract; and

(c) a listing of the supplies or services procured under each contract.

(2) The record must be available for public inspection.

NEW SECTION. Section 30. Definition. As used in [sections 30 through 33], "specification" means any description of the physical or functional characteristics or of the nature of a supply or service. It may include a description of any requirement for inspecting, testing, or preparing a supply or service for delivery.

NEW SECTION. Section 31. Duties of the department -- rules. (1) The department shall adopt rules governing the preparation, maintenance, and content of specifications for supplies and services required by the state.

(2) The department shall prepare, issue, revise, maintain, and monitor the use of specifications for supplies and services required by the state.

NEW SECTION. Section 32. Using agencies' advice. The director may obtain expert advice and assistance from personnel of using agencies in the development of specifications and may delegate in writing to a using agency the authority to prepare and utilize its own specifications.

NEW SECTION. Section 33. Competition. All specifications shall promote overall economy for the purposes intended and encourage competition in satisfying the state's needs and may not be unduly restrictive.

NEW SECTION. Section 34. Contract clauses -- rules. (1) The department may adopt rules permitting or requiring the inclusion of clauses providing for adjustments

in prices, time of performance, or other appropriate contract provisions relating to the following subjects:

(a) the unilateral right of the state to order in writing:

(i) changes in the work within the scope of the contract; and

(ii) temporary work stoppage or delay of performance; and

(b) variations occurring between estimated quantities of work in a contract and actual quantities.

(2) Adjustments in price pursuant to clauses established under subsection (1) must be computed in one or more of the following ways:

(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(b) by unit prices specified in the contract or subsequently agreed upon;

(c) by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

(d) in such other manner as the contracting parties may mutually agree; or

(e) in the absence of agreement by the parties, by a

unilateral determination by the state of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the state in accordance with applicable sections of the rules adopted under [section 35].

(3) The department may adopt rules, including but not limited to rules permitting or requiring the inclusion in state contracts of clauses providing for appropriate remedies and relating to the following subjects:

(a) liquidated damages, as appropriate;

(b) specified excuses for delay or nonperformance;

(c) termination of the contract for default; and

(d) termination of the contract, in whole or in part, for the convenience of the state.

(4) The director or the head of a purchasing agency may vary the clauses established by the department under subsections (1) and (3) for inclusion in any particular state contract. Any variations must be supported by a written determination that states the circumstances justifying such variation. Notice of any material variation must be stated in the invitation for bids or request for proposals.

NEW SECTION. Section 35. Cost principles -- rules. The department shall adopt rules setting forth cost principles which must be used to determine the allowability

of incurred costs for the purpose of reimbursing costs under contract provisions that provide for the reimbursement of costs. However, if a written determination is approved at a level above the procurement officer, such cost principles may be modified by contract.

NEW SECTION. Section 36. Definitions. As used in [sections 36 through 38], the following definitions apply:

(1) "Supplies" means supplies owned by the state.

(2) "Surplus supplies" means any supplies having a remaining useful life but that are no longer required by the using agency in possession of them. This includes obsolete supplies, scrap materials, and supplies that have completed their useful life cycle.

NEW SECTION. Section 37. Supply management rules. (1) The department shall adopt rules governing:

(a) the management of supplies during their entire life cycle;

(b) the sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate method designated by rule;

(c) transfer of surplus supplies.

(2) No employee of the owning or disposing agency directly involved with the disposal may purchase supplies sold by his agency.

NEW SECTION. Section 38. Allocation of proceeds. Proceeds from the sale, lease, or disposal of surplus supplies must be allocated as provided by 18-6-101, less a reasonable handling fee.

NEW SECTION. Section 39. Definitions. As used in [sections 39 through 45], the following definitions apply:

(1) "Cooperative purchasing" means procurement conducted by or on behalf of more than one public procurement unit.

(2) "Local public procurement unit" means a county, city, town, or other subdivision of the state or a public agency of any such subdivision; public authority; educational, health, or other institution; to the extent provided by law, any other entity that expends public funds for the procurement of supplies and services; and any nonprofit corporation operating a charitable hospital.

(3) "Public procurement unit" means a local or state public procurement unit of this or any other state, including an agency of the United States.

(4) "State public procurement unit" means a state department, agency, or official that expends public funds for the procurement of supplies and services.

NEW SECTION. Section 40. Cooperative purchasing authorized. The department may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies or services with one or

more public procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include but is not limited to joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts that are made available to local public procurement units.

NEW SECTION. Section 41. Sale, acquisition, or use of supplies by a public procurement unit. The department may sell to, acquire from, or use any supplies belonging to another public procurement unit independent of the requirements of [sections 12 through 29 and 36 through 38].

NEW SECTION. Section 42. Cooperative use of supplies or services. The department may enter into an agreement, independent of the requirements of [sections 12 through 29 and 36 through 38], with any other public procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

NEW SECTION. Section 43. Joint use of facilities. The department may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit under the terms agreed upon between the parties.

NEW SECTION. Section 44. Information and services -- fees. (1) Upon request, the director may make available to public procurement units certain services, including but not

limited to the following:

(a) standard forms;

(b) printed manuals;

(c) product specifications and standards;

(d) quality assurance testing services and methods;

(e) qualified products lists;

(f) source information;

(g) common use commodities listings;

(h) supplier prequalification information;

(i) supplier performance ratings;

(j) debarred and suspended bidders lists;

(k) forms for invitations for bids, requests for proposals, instructions to bidders, general contract provisions, and other contract forms;

(l) contracts or published summaries thereof, including price and time of delivery information; and

(m) cooperative purchasing.

(2) The state, through the director, may provide technical services, including but not limited to the following:

(a) development of product specifications;

(b) development of quality assurance test methods, including receiving, inspection, and acceptance procedures;

(c) use of product testing and inspection facilities; and

(d) use of personnel training programs.

(3) The director may enter into contractual arrangements and publish a schedule of fees for the services provided under subsections (1) and (2). Such fees may be used by the department to offset costs incurred in providing such services.

NEW SECTION. Section 45. Review of procurement requirements. To the extent possible, the director may collect information concerning the type, cost, quality, and quantity of commonly used supplies or services being procured or used by state public procurement units. The director may also collect such information from local public procurement units. The director may make available all such information to any public procurement unit upon request.

NEW SECTION. Section 46. Application. (1) Except as provided in [section 24], which applies retroactively to telecommunications equipment and systems and data processing equipment acquired under existing contracts, leases, or rental agreements, and subject to the terms of such agreements, [sections 1 through 46] apply only to contracts solicited or entered into after January 1, 1984, unless the parties agree to its application to a contract solicited or entered into prior to January 1, 1984.

(2) [Sections 1 through 46] apply to expenditure of public funds irrespective of their source, including federal

assistance money, by this state acting through a governmental body, as defined in [section 3], under any contract; but [sections 1 through 46] do not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in [sections 39 through 45]. [Sections 1 through 46] also apply to the disposal of state supplies. Nothing in [sections 1 through 46] or in rules adopted thereunder prevents any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(3) [Sections 1 through 46] do not apply to the construction of public works.

NEW SECTION. Section 47. Performance within state of public printing, binding, and stationery work — exceptions. (1) Except as provided in subsections (2) and (5), all printing, binding, and stationery work for the state of Montana must be performed within the state. All invitations for bids, requests for proposals, and contracts for such work must so stipulate.

(2) The work referred to in subsection (1) may be performed outside the state if it is established that:

(a) the work cannot be performed within the state;

(b) the lowest price for which the work can be procured within the state exceeds the charge usually and

customarily made to private individuals and corporations for work of similar character and quality; or

(c) all bids or proposals for the work or any part thereof are excessive and not reasonably competitive.

(3) No payment may be made by the state for printing, binding, or stationery work unless the work is done within the state or is authorized to be done outside the state pursuant to subsection (2).

(4) All contracts for work to be performed outside the state under subsection (2) must require that such work be performed under conditions which substantially conform to the laws of this state regarding conditions of employment, hours of labor, and minimum wages. Violation of the provisions of this subsection is cause for cancellation of the contract.

(5) The publication of the Montana Code Annotated, as provided in 1-11-301 through 1-11-304, as amended, is exempt from the requirements of this section.

Section 48. Section 18-4-104, MCA, is amended to read:

"18-4-104. Purchases exempt from general requirements. (1) Fresh fruits and vegetables (other than potatoes) shall not be included in the supplies to be purchased as provided in ~~this chapter~~ [sections 1 through 46]. The department may allow a state agency or institution to purchase fresh fruits and vegetables. An itemized account shall be kept of these

purchases and the account shall be furnished to the department.

(2) Likewise, when immediate delivery of articles or performance of service is required by the public exigencies, the articles or service so required may be procured by open purchase or contract at the place and in the manner in which the articles are usually bought and sold or the services engaged between individuals but under the direction of the department.

(3) The department of administration may exempt the department of institutions from the provisions of ~~part 2 of this chapter~~ [sections 1 through 46] for the purchase of suitable clothing by the department of institutions for residents of its institutions and community-based programs.

(4) As used in this section, "suitable clothing" means styled, seasonable clothing, which will allow the resident to make a normal appearance in the community."

Section 49. Section 18-7-104, MCA, is amended to read:

"18-7-104. Union label. All printing for which the state of Montana is chargeable shall bear the label of the branch of the international typographical union, the allied printing trades council, or the amalgamated lithographers of America of the locality in which it is printed, except under the following conditions. Printing firms not having the use of the labels and who are desirous of presenting bids for

printing as enumerated above shall be required to establish consideration as a responsible bidder as follows:

(1) As a condition to consideration as a responsible bidder, printing concerns must file with the secretary of state a sworn statement to the effect that employees in the employ of the concern which is to produce such printing are receiving the prevailing wage rate and are working under conditions prevalent in the locality in which the work is produced.

(2) Whenever a collective bargaining agreement is in effect between an employer and employees who are represented by a responsible organization which is in no way influenced or controlled by the management, such agreement and its provisions shall be construed as conditions prevalent in said locality and shall be the minimum requirement for being adjudged a responsible bidder under ~~18-7-103~~ [sections 1 through 46], [section 47], or 18-7-104.

(3) Printing firms having the use of the union labels as set forth above shall be deemed as having complied with the provisions of ~~18-7-103~~ [sections 1 through 46], [section 47], or 18-7-104, but nothing in these provisions shall be construed as exempting such bidders from any provisions of ~~18-7-103~~ [sections 1 through 46], [section 47], or 18-7-104, and such bidders shall also be required to conform to all provisions thereof."

Section 50. Section 18-7-105, MCA, is amended to read:

"18-7-105. Penalty. Any officer of the state who shall accept any printed matter, ~~except certificates named in 18-7-103~~, for which the state is chargeable in whole or in part or who is found to have had printed matter produced, under conditions other than as set forth in ~~18-7-103~~ [sections 1 through 46], [section 47], or 18-7-104 shall be subject to a fine of $50 for each and every offense."

Section 51. Section 87-1-209, MCA, is amended to read:

"87-1-209. Acquisition and sale of lands or waters. (1) The department, with the consent of the commission and, in the case of land acquisition involving more than 100 acres or $100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

(a) for fish hatcheries, nursery ponds, or game farms;

(b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) for public hunting, fishing, or trapping areas;

(d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing

animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

(e) for state parks and outdoor recreation;

(f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The department, with the consent of the commission, may acquire by condemnation lands or structures for the preservation of historical or archaeological sites that are threatened with destruction or alteration.

(3) (a) The department, with the consent of the commission, may dispose of lands and waters acquired by it on those terms after that public notice, without regard to other laws which provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable.

(b) Notice of sale describing the lands or waters to be disposed of shall be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if no newspaper is published in that county, then in any newspaper with general circulation in that county.

(c) The notice shall advertise for cash bids to be presented to the director within 30 days from the date of the first publication. Each bid must be accompanied by a

cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid shall be accepted upon payment of the balance due within 10 days after mailing notice by registered or certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders shall be similarly notified in succession until a sale is completed. Deposits shall be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids which do not equal or exceed the full market value of the lands and waters as determined by the department. The department shall convey the lands and waters without covenants of warranty by deed executed by the governor or in his absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(4) ~~Notwithstanding the provisions of 18-4-102, the~~ The department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas, in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish, and areas which provide access to fishing sites for the public. In no case may the total cost of such installment contracts exceed the

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cost of purchases authorized by the department and appropriated by the legislature."

NEW SECTION. Section 52. Codification instruction. Sections 1 through 46 are intended to be codified as an integral part of Title 18, and the provisions of Title 18 apply to sections 1 through 46. Section 47 is intended to be codified as an integral part of Title 18, chapter 7, and the provisions of Title 18, chapter 7, apply to section 47.

NEW SECTION. Section 53. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 54. Repealer. Sections 18-4-101, 18-4-102, 18-4-201 through 18-4-203, 18-4-211 through 18-4-214, 18-7-102, 18-7-103, and 18-7-111 through 18-7-113, MCA, are repealed.

NEW SECTION. Section 55. Effective date. This act is effective January 1, 1984.

-End-

MINUTES OF THE MEETING OF THE HOUSE STATE ADMINISTRATION COMMITTEE
January 31, 1983

Chairman Joe Brand called the meeting to order at 9 a.m. in Room 129 of the Capitol. All members were present.

SENATE BILL 58

SENATOR PETE STORY called for the passage of Senate Bill 58, saying it would grant the Attorney General, State Auditor, Superintendent of Public Instruction, and Secretary of State the same powers granted to executive branch department heads; however, those same officials would be exempt from the permission for approval requirements from the Governor and the duties required of department heads unless otherwise directed by statute. Senator Story said it would put these elected officials on the same power basis as the appointed department heads.

Bob McCue, representing the Secretary of State's office, stated Secretary of State James Waltermire's support of the measure.

REPRESENTATIVE KATHLEEN McBRIDE noted that there was no immediate effective date on the bill. She questioned why. Senator Story said there was no sense of urgency in the matter.

Chairman Joe Brand agreed with Senator Story that an effective date could be added to the bill in Executive Session.

THERE BEING NO FURTHER QUESTIONS FROM COMMITTEE MEMBERS, OR TESTIMONY BY PROPONENTS OR OPPONENTS, CHAIRMAN BRAND ENDED THE HEARING ON SENATE BILL 58.

HOUSE BILL 493

REPRESENTATIVE DAN YARDLEY said House Bill 493 was requested by the Department of Administration. He said it would amount to a comprehensive act governing the acquisition of supplies and services by the state. It would also grant the department rule-making authority in implementing the law. Representative Yardley passed out a statement of intent proposed for the measure. He said a statement of intent was required because the statute would grant the rule-making authority to the department. Representative Yardley said the bill was drafted from the model American Bar Association Procurement Act. He said it would repeal present laws and substitute for existing laws and expand others. He said present laws are quite old.

Morris Brusett, Director of the Department of Administration, said the department has an automated system for purchasing and has sifted out from the legislation portions of the model ABA code that were irrelevant or unnecessary. He said the bill has 55 sections and he would talk about the sections in groups of sections:

Sections 1 through 5, Brusett said, deal with the purpose and rationale and the philosophical framework for purchasing. Sections 6 through 11 deal with the organization and duties of the purchasing structure within state government. Sections 12 through 20 deal with the selection of vendors and the formation of contracts. He said the legislation emphasizes the competitive mode of purchasing. He said it also defines when the state must go to a request for proposal in purchasing. Sections 21 through 26 grant the state authority to contract in purchasing matters. Section 23, Brusett said, is a change from existing practice. He said Section 23 deals with performance bonds. At present, he said, the law requires 100 percent bonds to be posted, but in some cases, the services do not justify a full 100 percent bond. He said Section 23 also provides for the issuance for other collateral rather than full, 100 percent bonds. Section 24, Brusett said, is a limit on purchasing. It puts a maximum limit of three years on purchase time. But it also allows five years for capital equipment and some equipment can go for as long as ten years. This is because a three-year period for more expensive equipment would make proration over a short time inefficient. Sections 27 through 29 deal with the accounting systems in place. Sections 36 and 37 deal with surplus property management. Section 38 deals with the inter-government relations, relations between the state and local governments. Section 46 incorporates into law, certain necessary retroactive applications of parts of the code to deal with prior agreements and existing contracts. The provision would require, however, that signers agree to the incorporation to the new statutory scheme. Section 47 deals with printing, Brusett said. He called it "a big issue." He said 25 percent of printing dollars stay within the state government structure because the state does that much printing on its own. Another 40 percent of the printing dollars go to Montana printers, while out-of-state printers take 35 percent of the Montana state government printing dollar. He said this is true even though Montana printers get a 2 percent preference, except for District Court or Supreme Court printing needs. He said this bill provides for all printing to be done in-state unless the capability is not there or prices are too high. He said it does not set a preference, but allows the establishment of a preference by administrative rule. Sections

48 through 55, Brusett said, need amendments and an effective date. He said some sections would be effective on approval, others would become effective in 1984. He said sections 24 and 46 would be effective immediately because of certain needs within the state telephone system.

PROPONENTS

Rick Hill, representing Montana International Insurance, testified in favor of the measure, specifically about the bonding provisions. Hill said he favors a lesser bonding requirement (and collateral). He said the state can be secured just as well by "irrevocable letters of credit." He said that such letters are just as good as bonding in many cases.

Ray Koontz, a Helena merchant, said the only bonds he can get are SBA bonds. He said at present the statutory requirements for full bonding create problems for him and make it impossible for him to bid on state jobs. He said he supports Section 23 of the proposed legislation. He said it is easy to get letters of credit from financial institutions and such letters cover the jobs. With the bill, he said, "we could compete equally with our competitors."

Steve Winter, representing the Montana Power Company, called the bill a step of the package recommended by the Governor's Council on Management.

Stan Burgard, representing Color World of Montana, a Bozeman printing firm, supported the measure. He said the dollar volume in state printing is huge and the state printers would benefit by the bill.

Jack Noble, representing the Montana University System, also endorsed the measure.

OPPONENTS

Loren Gunderson, representing Synergy Services, of Helena, said he supported some sections of the bill, especially the bonding provisions. But he suggested the Department of Administration reproduce and make available microfiche recordings of bid openings to be distributed to prospective bidders. He said problems he foresees with the bills included the following: Section 25, regarding the right to inspect vendors plant, he said should be

made stronger. Section 22, regarding the Department of Administration's duty to provide accounting data, he described as "questionable." Gunderson also said there was no guarantee that vendors who are on the vendors list will actually get an opportunity to make a bid. He said that the public would, under the legislation, lose the right to examine bids at bid openings. He suggested the committee should clarify the language in the bill to maintain that right. He said he would also like to see clarity in the "bid security" arrangements required by the legislation; specifically, would bid security be required or would it be permissive on the part of the department?

THERE BEING NO FURTHER COMMENTS BY PROPONENTS OR OPPONENTS OF THE MEASURE, CHAIRMAN JOE BRAND CALLED FOR CLOSE BY ITS SPONSOR, REPRESENTATIVE YARDLEY.

Representative Yardley called the bill one of the most important bills this session. He said it would make for more efficient operation of purchasing, a better purchasing system, and make the state more competitive.

COMMITTEE QUESTIONS

Representative Kathleen McBride asked Brusett if Section 5, regarding public access, is in current law. Brusett said all the purchasing documents are public documents. Representative McBride referred to page 24 of the measure and specifications regarding automobiles. She asked if the department expected to have more input into the automobile purchasing process by state government. Brusett said he did, and that issue was an important one. Representative McBride asked why the section in the model ABA bill, to allow local governments authorization to adopt similar regulations, was omitted from this legislation. Brusett said the department felt it was not its role to suggest how local governments should be regulated. Brusett said, however, he did not object to inclusion of such a provision.

REPRESENTATIVE JERRY DRISCOLL asked that if this legislation was law, how the phone system selection might have been different. Brusett said the state could then have gone to the tax exempt market to seek funding for the system, but the award of the system contract still would have gone to the lowest qualified bidder, whether or not that bidder was in-state or out-of-state.

REPRESENTATIVE GLENN MUELLER asked for Brusett's reaction to Gunderson's remarks. Brusett said that, regarding Section 25, and the department's authority to inspect vendor's plants, the agency left it in because of a frequent problem of bidders winning bids even though they are not capable of fulfilling the contract. He said inspections enable the department to determine if a bidder can do the job. Regarding Section 22, when bids are made on a cost-plus basis, there is the need to determine a valid cost setting system. Representative Mueller asked if that was in the present law, and Brusett said it was not. Regarding the concerns about the bid openings, Brusett said everyone can be present at bid openings and all documents are public after the bids are opened. Brusett said the department uses the same practice at present.

Chairman Brand asked if the measure would make any change in 18-4-203, MCA. Brand said that section is being repealed at present. Brusett said the bill provides for the presence of the public end bidders and would amount to no change.

Chairman Brand asked Gunderson for his remarks. Gunderson said the change in the legislation is that with the present bidding process, examinations can be made before the actual award of the bids. Gunderson said the bill would restrict public examination of the bids until after the bid is awarded.

Brusett said all the bid award process is done in public.

Chairman Brand asked about bid security. Morris Brusett said the legislation would provide for bidder security.

REPRESENTATIVE FRANCIS BARDANOUVE asked if the legislation would allow for the cancellation of contracts if no money is appropriated. He asked why have contracts if no money was appropriated. Brusett said many contracts now have cancellation clauses to anticipate such difficulties. Representative Bardanouve asked why many contracts were let before money is appropriated. Brusett said that often leases are signed that go beyond biennia. "We have to pay for services already done," Brusett said. Representative Bardanouve said that could often result in long-term carrying charges. He asked if it were possible to have a provision to give the Legislature the opportunity to review major purchases before contracts are let. Brusett asked if Representative Bardanouve was suggesting a legislative purchasing oversight committee.

REPRESENTATIVE BRENT BLISS questioned Brusett, who said that the printing provision in the legislation is intended to bring back to Montana printers 1/3 of the printing that goes out of state.

Representative Driscoll questioned why that concern was just for printing, why not for all bids that go out of state. Brusett said that was possible, and it was within the power of the committee to make such changes in the legislation.

Representative Bliss asked if the 10 percent preference in the bill would be taken advantage of by Montana printers. Don Berry, of the department, said the 10 percent preference figure applies only to District and Supreme Court matters.

REPRESENTATIVE JOHN PHILLIPS asked how this printing provision would tie to the Montana State Prison printing shop. Brusett said the department is at present directing some work to the prison shop.

REPRESENTATIVE WALTER SALES asked if the measure would repeal 18-7-104 and 105, the provisions requiring union labels on state printing. Brusett said the legislation would not.

Representative Phillips asked if the measure would cover consultants. Brusett said it would not.

Chairman Brand asked how many other states have similar legislation. Brusett said about a dozen use the model code, in whole or part.

Chairman Brand asked about the contract for the telephone system going to a Texas firm, and how many Montana firms were affected by that. John Neraas, an assistant to Brusett for telecommunications, said that the bidding process for the telephone system resulted in bids being taken from nine out-of-state firms for the phone system. He said the number of jobs in Montana because of the bid would stay about the same regardless of who won the award.

Chairman Brand asked if the Texas firm would "piggy back" on the services offered by Mountain Bell, and if Chairman Brand's phone rates would increase.

Representative Driscoll noted that "these people from Texas are not paying Montana taxes." Brusett said six to ten people were affected by the award to the Texas company, and only some of those will come into Montana because of the award.

Chairman Brand asked about the three percent preference for Montana bidders. He asked that some critics claim it results in higher costs to the state, but Chairman Brand disagreed. He said problems arise with out-of-state bidders; it is expensive to make out-of-state inspections. Brusett said inspections are needed to watch "new people." He said the department also needs to do a better job of pre-qualification of bidders.

Responding to a question by REPRESENTATIVE CLYDE SMITH, an assistant to Brusett said that the department proposes to establish a pre-qualification process by way of this measure.

Chairman Brand asked about sub-contractors. The same assistant to Brusett said the bill would allow the state to deal with problem contractors.

THERE BEING NO MORE QUESTIONS FROM COMMITTEE MEMBERS, CHAIRMAN BRAND CLOSED DISCUSSION ON HOUSE BILL 493.

SENATE BILL 66

Representative Mueller stated that he would speak for Senate Bill 66 on behalf of SENATOR THOMAS KEATING, who was unable to make it to today's hearing. Representative Mueller said Senate Bill 66 would abolish the requirement that the appointment of clerks and subordinants of public officers be in writing and that the appointees take and file oaths of office. He said the measure was requested by the Secretary of State, and would save time and money for the taxpayers.

PROPONENTS

Bob McCue, representing Secretary of State James Waltermire, spoke in support of the measure as "simply a housekeeping bill." He said the present requirement in the law is duplicative and therefore not necessary.

THERE BEING NO MORE TESTIMONY BY PROPONENTS, AND NO STATEMENTS BY OPPONENTS OF SENATE BILL 66, CHAIRMAN BRAND CALLED FOR QUESTIONS BY COMMITTEE MEMBERS.

Michael Hunt, representing the State Fireman's Association, said that when widows remarry, they get a refund of the amount paid into the system.

THERE BEING NO MORE QUESTIONS FROM COMMITTEE MEMBERS, CHAIRMAN BRAND CLOSED THE HEARING ON HOUSE BILL 487.

EXECUTIVE SESSION

HOUSE BILL 487

Representative Sales MOVED House Bill 487 DO PASS, Representative Mueller seconded.

Representative McBride asked where in the bill did it say that widows get cashed out.

The questions being called, the motion carried by unanimous voice vote. House Bill 487 was reported out DO PASS.

HOUSE BILL 493

Chairman Brand asked if the committee felt that House Bill 493 needed to go to subcommittee. He noted concerns that Representative Bardanouve had about the measure. Representatives O'Connell and Bardanouve voiced support for sending it to a subcommittee. Chairman Brand voiced concern about the rule-making authority to be granted by the measure. Representative McBride said she was concerned about the costs of terminating contracts. Chairman Brand agreed, saying the state should consider the predicament of contractors whose services are terminated.

Chairman Brand appointed a subcommittee of REPRESENTATIVE FRANCIS KOEHNKE as chairman, with Representatives Bardanouve and Smith to serve also.

SENATE BILL 58

Representative O'Connell MOVED that Senate Bill 58 be concurred in, Representative Mueller seconded. The question being called, the motion carried by unanimous voice vote. Senate Bill 58 was reported out to be concurred in.

SENATE BILL 66

Representative Mueller MOVED that Senate Bill 66 be concurred in, Representative Smith seconded. The question being called, the motion carried by unanimous voice vote. Senate Bill 66 was reported out to be concurred in.

VISITOR'S REGISTER

HOUSE _____ COMMITTEE

BILL HB 493 DATE _____

SPONSOR _____

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
Loren Lundeson	2760 Country Club Ave	Synergy Services Co		
~~Pete Story~~	~~Senate District 34~~		~~Support~~	
STAN BURGARO	BOZEMAN	COLOR WORLD OF MT.	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FORM CS-33

WITNESS STATEMENT

NAME Richard A. Hill BILL No. 493

ADDRESS 1725 5th Ave Helena DATE 1/31/83

WHOM DO YOU REPRESENT self

SUPPORT X OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The bill provides for changes in bonding requirements that would better serve the State and the public

FORM CS-34
1-81

WITNESS STATEMENT

Name Ray Kuntz Committee On

Address 224 Greenwood Dr. Helena Date 1/31/82

Representing The Floor Show Support ✓

Bill No. 493 Oppose

section 23 Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Hard for small firms to get Bonds

2. Letters of credit are easy to get many more firms will be able to compete

3. State will save alot of money by having more competive Bids

4. New small Business Deserve the right to Bid on State Jobs

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

130

WITNESS STATEMENT

Name Stephen Winter

Address 430 Roosevelt Drive Butte, MT

Representing Individual

Bill No. 493

Committee On State Adm

Date 1/31

Support X

Oppose

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. This bill effectively ~~is~~ begins to implement the Governor's
2. Council recommendation on Purchasing. As the team leader
3. responsible for the recommendations, I ask for support
4. for the bill. The ~~recommendations~~ provides for decentralized control of purchasing ~~and reports~~ and represents progress. This bill is one step to provide a better purchasing function.

Steve Winter

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

WITNESS STATEMENT

Name JACK NOBLE Committee On _____

Address HELENA Date JAN 31, 1983

Representing MONTANA UNIVERSITY SYSTEM Support X

Bill No. HB 493 Oppose _____

Amend X

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. ENDORSE THE TESTIMONY OF THE DEPARTMENT OF ADMINISTRAT

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

WITNESS STATEMENT

Name John Neraas | Committee On _____

Address rm. 222 | Date 1/30

Representing Dept of Admin | Support ✓

Bill No. 493 | Oppose _____

Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

Rep. Hand: "I guess the first thing you would do is pull the University System back out and put revenue back in."

Rep. McBride: "Are we going to take any action on the Treasury Bills?"

Rep. Brand: "We are going to deal with them today."

THE STATE ADMINISTRATION COMMITTEE IN EXECUTIVE SESSION.

Chairman Brand asked what action the committee wished to take on HB 639.

REP. MUELLER MOVED and REPRESENTATIVE O'CONNELL SECONDED THAT HB 639 DO PASS.

Rep. Hand: "Do you have any problem believing that this empire will crumble that quickly?"

Rep. Brand: "What's happening, I think, is that the time before they said they needed less departments. Now what we are doing is building it over again."

Rep. McBride: "I guess I will only offer a comment. As Chairman of Local Government Committee, working more with the local people who deal with the state and state people who are provided as liaison, I think the reality is that it makes more sense to have them all under the same department."

Rep. Brand: "I am not going to argue the point, but I think that we are pawns between the government agencies to be shifting the burden wherever they so desire."

Question was called for - HB 639 PASSED UNANIMOUSLY.

Chairman Brand asked what action the committee wished to take on HB 493.

Rep. Koehnke asked Lois Menzies to explain the amendments.

LOIS MENZIES, Legislative Council: "You're taken by surprise, Rep. Koehnke, by the length of these amendments. We added two new sections, one on page 2 (Amendment 20) and then the other new section, which is on the last page (Amendment 34). When we added those two sections, it threw off all the internal references in the bill. Amendment 20 on the second page is addressing Rep. Bardanouve's concerns that there be some sort of legislative consultation before a contract is

entered into that is longer than three years and exceeds $25,000. Rep. McBride had concerns about including local governments into this act at their option. That amendment is on the last page." (Amendments attached.)

REP. KOEHNKE MOVED and REP. SMITH SECONDED TO ACCEPT THE AMENDMENTS.

VICE-CHAIRMAN O'CONNELL, in the absence of the Chairman, asked if there was any more discussion on the amendments.

Rep. Mueller: "On Amendment 20, what was the amount of money before?"

Rep. Koehnke: "It was originally $500,000 and Francis (Bardanouve) said he didn't mean that."

Rep. Driscoll: "I thought there was going to be an amendment that gives preference to local contractors."

Lois Menzies: "It is not addressed in the amendments; I am not certain that it is addressed in the bill."

MORRIS BRUSSET, Director of the Department of Administration: "We have in the procurement bill that there is a preference for local contractors for printing."

Rep. Driscoll: "Is there anything in this bill or in the law for enforcement of that?"

Morris Brusset: "We are responsible for enforcement of the in-state preference."

Question was called for. The AMENDMENTS TO HB 493 WERE PASSED UNANIMOUSLY.

REP. SMITH MOVED and REP. HAMMOND SECONDED THAT THE BILL BE PASSED INCLUDING A STATEMENT OF INTENT AS AMENDED. HB 493 PASSED UNANIMOUSLY.

Vice-chairman O'Connell opened the hearing for the amendments to House Bills 489, 505, 530, 531, 532, 533 (Rep. Bardanouve's bills).

Morris Brussett was asked to explain the amendments: "Basically, the key is on the amendments on page 2 and the rest is to make everything consistent with this. In essence, instead of having one special revenue fund, we have a state special revenue fund that consists of monies from state sources that

STANDING COMMITTEE REPORT

PAGE ONE OF SIX

FEBRUARY 10, 19 83

MR. SPEAKER

We, your committee on STATE ADMINISTRATION

having had under consideration HOUSE Bill No. 493

white reading copy (white)
color

"AN ACT TO GENERALLY REVISE THE LAWS GOVERNING PROCUREMENT OF SUPPLIES AND SERVICES FOR STATE AGENCIES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTIONS 18-4-104, 18-7-104, 18-7-105, AND 87-1-209, MCA; AND REPEALING SECTIONS 18-4-101, 18-4-102, 18-4-201 THROUGH 18-4-203, 18-4-211, THROUGH 18-4-214, 18-7-102, 18-7-103, AND 18-7-111 THROUGH 18-7-113, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

HOUSE 493

Respectfully report as follows: That Bill No.

be amended as follows:

1. Title, lines 12 and 13.
Strike: "A" on line 12 through "DATE" on line 13
Insert: "EFFECTIVE DATES"

2. Page 1, line 17.
Strike: "46"
Insert: "48"

3. Page 1, line 19.
Strike: "46"
Insert: "48"

4. Page 2, line 13.
Strike: "46"
Insert: "48"

DO PASS

REP. JOE BRAND, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

41

FEBRUARY 10, 19 83

5. Page 5, line 11.
Strike: "46"
Insert: "48"

6. Page 6, line 3.
Strike: "46"
Insert: "48"

7. Page 6, line 7.
Strike: "46"
Insert: "48"

8. Page 6, line 11.
Strike: "46"
Insert: "48"

9. Page 6, line 14.
Strike: "46"
Insert: "48"

10. Page 6, line 15.
Strike: "46"
Insert: "48"

11. Page 7, line 1.
Strike: "46"
Insert: "48"

12. Page 7, line 7.
Strike: "46"
Insert: "48"

13. Page 7, line 8.
Strike: "46"
Insert: "48"

14. Page 7, line 12.
Strike: "46"
Insert: "48"

15. Page 7, line 14.
Strike: "46"
Insert: "48"

16. Page 12, line 4.
Strike: "29"
Insert: "30"

Chairman.

STATE PUB. CO.
Helena, Mont.

FEBRUARY 10, 19 83

17. Page 12, line 8.
Strike: "46"
Insert: "48"

18. Page 14, line 18.
Strike: "46"
Insert: "48"

19. Page 21, line 21.
Strike: "46"
Insert: "48"

20. Page 22.
Following: line 21
Insert: "NEW SECTION. Section 35. Consultation with the legislature. Before entering into a contract, lease, or rental agreement for supplies or services for a period longer than 3 years and involving expenditures exceeding $25,000, the department or its designee shall inform and consult with the legislature if the legislature is in session or the legislative finance committee if the legislature is not in session."
Renumber: subsequent sections

21. Page 24, line 2.
Strike: "30"
Insert: "31"
Strike: "33"
Insert: "34"

22. Page 26, line 5.
Strike: "35"
Insert: "36"

23. Page 27, line 7.
Strike: "36"
Insert: "37"
Strike: "38"
Insert: "39"

24. Page 28, line 5.
Strike: "39"
Insert: "40"
Strike: "45"
Insert: "46"

Chairman.

STATE PUB. CO.
Helena, Mont.

FEBRUARY 10, 19 83

25. Page 29, line 11.
Strike: "29"
Insert: "30"
Strike: "36"
Insert: "37"
Strike: "35"
Insert: "39"

26. Page 29, line 14.
Strike: "29"
Insert: "30"

27. Page 29, line 15.
Strike: "36"
Insert: "37"
Strike: "38"
Insert: "39"

28. Page 31, line 20.
Strike: "46"
Insert: "48"

29. Page 31, line 24.
Strike: "46"
Insert: "48"

30. Page 32, line 3.
Strike: "46"
Insert: "48"

31. Page 32, line 6.
Strike: "45"
Insert: "46"
Strike: "46"
Insert: "48"

Strike: "39"
Insert: "40"

32. Page 32, line 8.
Strike: "46"
Insert: "48"

33. Page 32, line 12.
Strike: "46"
Insert: "48"

Chairman.

FEBRUARY 10, 19 83

34. Page 32.
Following: line 13
Insert: "NEW SECTION. Section 48. Local government adoption of procurement provisions. A political subdivision or school district may adopt any or all parts of [sections 1 through 48] and the accompanying rules promulgated by the department."
RENUMBER: subsequent sections
35. Page 33, line 23.
Strike: "46"
Insert: "48"

36. Page 34, line 12.
Strike: "46"
Insert: "48"

37. Page 35, line 17.
Strike: "46"
Insert: "48"
Strike: "47"
Insert: "49"

38. Page 35, line 20.
Strike: "46"
Insert: "48"

39. Page 35, line 21.
Strike: "47"
Insert: "49"

40. Page 35, line 23.
Strike: "46"
Insert: "48"
Strike: "47"
Insert: "49"

41. Page 36, line 7.
Strike: "46"
Insert: "48"
Strike: "47"
Insert: "49"

42. Page 39, line 4.
Strike: "46"
Insert: "48"

Chairman.

STATE PUB. CO.
Helena, Mont.

FEBRUARY 10, 19 83

43. Page 39, line 6.
Strike: "46"
Insert: "48"
Strike: "47"
Insert: "49"

44. Page 39, line 8.
Strike: "47"
Insert: "49"

45. Page 39, line 19.
Strike: "This"
Insert: "(1) Except for sections 24 and 47, this"

46. Page 39.
Following: line 20
Insert: "(2) Sections 24 and 47 are effective on passage and approval."

AND AS AMENDED
DO PASS

REP. JOE BRAND, Chairman.

STATE PUB. CO.
Helena, Mont.

FEBRUARY 10, 19 83

STATEMENT OF INTENT
House Bill No. 493

A statement of intent is required for this bill because it grants rulemaking authority to the Department of Administration for the purpose of implementing the procurement procedures established by the bill. The bill is based upon the American Bar Association Model Procurement Code for State and Local Governments. The Model Code was drafted on the concept that it should be a short statute providing the fundamentals of sound procurement that should be implemented by rules consistent with the statutory framework.

It is intended that the Department look to the Recommended Regulations for the Model Procurement Code for State and Local Governments adopted by the American Bar Association for guidance in adopting rules implementing the provisions of this bill.

REP. JOE BRAND Chairman.

STATE PUB. CO.
Helena, Mont.

Proposed Amendments to HB 493

1. Title, lines 12 and 13.
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Strike: "46"
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Insert: "48"

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Insert: "48"

20. Page 22.
Following: line 21
Insert: "NEW SECTION. Section 25. Consultation with the legislature. Before entering into a contract, lease, or rental agreement for supplies or services for a period longer than 3 years and involving expenditures exceeding $25,000, the department or its designee shall inform and consult with the legislature if the legislature is in session or the legislative finance committee if the legislature is not in session."
Renumber: subsequent sections

21. Page 24, line 2.
Strike: "30"
Insert: "31"
Strike: "33"
Insert: "34"

22. Page 26, line 5.
Strike: "35"
Insert: "36"

23. Page 27, line 7.
Strike: "36"
Insert: "37"
Strike: "38"
Insert: "39"

24. Page 28, line 5.
Strike: "39"
Insert: "40"
Strike: "45"
Insert: "46"

25. Page 29, line 11.
Strike: "29"
Insert: "30"
Strike: "36"
Insert: "37"
Strike: "38"
Insert: "39"

26. Page 29, line 14.
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Insert: "46"
Strike: "46"
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32. Page 32, line 8.
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40. Page 35, line 23.
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Insert: "49"

41. PAGE 36, LINE 7.
STRIKE: "46"
INSERT: "48"
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42. Page 39, line 4.
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Insert: "(2) Sections 24 and 47 are effective on passage and approval."

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
MONTANA STATE SENATE

March 7, 1983

The forty-first meeting of the Senate State Administration Committee was called to order by Senator Pete Story, Chairman on March 2, 1983 at 10:00 a.m. in room 331 of the State Capitol Building, Helena, Montana.

ROLL CALL: All members were present except Senator Stimatz.

The meeting was called to consider House Bills 51, 493, 506, 375, 508 and 67.

CONSIDERATION OF HOUSE BILL 51:
"AN ACT PROHIBITING CHANGING BOUNDARIES OF A COUNTY COMMISSIONER DISTRICT WITHIN 6 MONTHS PRECEDING A PRIMARY ELECTION; AMENDING SECTION 7-4-2102, MCA."

REPRESENTATIVE YARDLEY, District 74, presented this bill and said that currently the law says six months prior to the general election they must change county commissioner districts and also every ten years when they have census it is a requirement that they redistrict. Under the current laws it says elected for six years and they have one up every two years. Under the current law you have to live in the district to run. Six months before the general election would make the it May 2, 1982 and the deadline for filing was April 19th. It eliminated any prospective candidate that would like to run.

PROPONENTS: None

OPPONENTS: None

QUESTIONS OF THE COMMITTEE: None

SENATOR MANNING MOVED HOUSE BILL 51 BE CONCURRED IN MOTION PASSED. Senator Manning will carry this bill.

CONSIDERATION OF HOUSE BILL 493:
"AN ACT TO GENERALLY REVISE THE LAWS GOVERNING PROCUREMENT OF SUPPLIES AND SERVICES FOR STATE AGENCIES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF ADMINISTRATION: AMENDING..."

REPRESENTATIVE YARDLEY, District 74, presented this bill who said that this bill is the request of the Department of Administration. He called the committee's attention to the Statement of Intent. He said that there has been four studies made on the purchasing of state government and was critized by

the council, the legislative auditor, the department of administration, the governor's counsel on management and the department of administration's director's office. House Bill 493 revises those laws to provide a better method of purchasing. It is based on the American Bar Association model procurement act that has been revised to state and does not apply to local government. It would not apply to any construction project.

MORRIS BRUSETT, Director of the Department of Administration spoke as a proponent to this bill at the introduction of its author and said that they drafted this after the 17 organizations that they do business with. They did meet with the instate printers and discussed the bill because they have a major change in the way they procure printing. They also set up a purchasing advisory counsel. The language is the ABA language. There are 57 sections. He went through it be grouping.
Section 1 through 5 provides the rational philospical framework and the definition for state purchasing.

Section 6 through 11 discusses the purchasing organization and duties and rule making and how to remove bidders from the bidders list.

Section 7 through 20 discusses the purchasing practices

Sections 21 through 26 states the contract terms.

Section 23 gives a new provision in terms of bid secure performance bonds. They have now allowed irrevokable letters of credit instead of bonds and limited performance bonds to 25% instead of 100%.

Section 24 provides for data processing or telecommunications they can go ten years in their contract. The reasons for this is these purchases are major purchases and come from revolving funds and it is not feasable to take a major purchase and prorate it over three years because the cost to the user would be prohibative, so the cost of a new computer would be charged out to the agency. Some of the concern in the House regarding long term contracts has led them to write in Section 25 which says "any contract over 3 years and $25,000 it requires the approval of the legislature or interm legislative finance committee.

Section 28 through 30 requires report to the attorney general.

Section 31 through 34 charges the department responsibility for developing standard product specifications.

Section 35 relates relates to contract clauses.

Section 36 relates to principals.

Section 37 through 39 relates to supply management and surplus property. When they get federal surplus they tack on handling charges.

Section 40 through 46 relates to intra-governmental relations. Permits the state to do purchasing with other gov. jurisdictions. Section 48 was added in the House saying local government can adopt this.

Section 47 permits retroactive application of that section. He gave some background on this saying currently they have entered into a lease agreement for a new telephone system for the state four (university units) and the capital complex. Under current law, they can lease this, and this law will allow us to convert it to a lease-purchase and also will be able to take the financing out of the regular tax exempt market and they estimate that they can save about $3 million by conversion. He said that their contract with CENTEL, the telephone company, provides that if legislation is passed which permits us to go to ten years, they will permit us to convert that current lease which is now at 14% interest to tax exempt financing which would be in the area of 7% interest. They do have a provision approved by the subcommittee on appropriations that would authorize the kind of financing that would be permitted.

Section 49 is the printing section where you have testimony on both sides of the issue. Currently under printing the general contract provides that instate printers get 2% preferance. The instate printing is 40%, out-of-state 35% and in-house printing is 25%. He said that the state of Oregon has a law that any thing they can do in state cheaper will be done that way. He stated that they have adopted that law. Another provision provides if we do not think in-state fees are reasonable we may go out of state.

He reviewed the rest of the sections quickly to the committee.

PROPONENTS:

JACK NOBLE, Deputy Director of Finance and Claims, Commissioner of Higher Education Office, endorsed the proposal of the Department of Administration.

RAY KUNTZ, businessman of the Floor Show, stated that three and one half years ago he started and had a real hard time bidding state carpet jobs because the only type of bonds he could get required semi-annual audits and alot of paper work and it went for twice what a local bond would cost. A letter of credit is fairly easy to get. He said he would like to see a change of an effective date upon passage.

STAN THURSTON, Thurber Printing, stated that they support this bill and stated that they are interested in giving in-state-printing better leverage because they are in business here, furnish a payroll that funds itself from the community and into the state. He said that they have a 2% preferance in the state of Montana while other industries in other states have 3%.

BOB GRAFF, Art Craft Printers, said that they have about 150 employees in Montana. He said that commercial printing does require some expertise. He said if you put out enough feelers you can always find someone that will sell you something for half price but that they should do business in Montana.

JOHN BRANHART, Color World, stated taxes belong in Montana and to the Montana people.

MIKE NEAGLE, State Publishing Company, stated that he supports this bill. Printing is a highly competitive industry.

There were no other proponents.

OPPONENTS:

FREDRICK VERZANI, representing himself in the business forms industry, stated Section 49 is a concern. He said he would like to correct earlier statements that we were never notified. They were not notified prior to the introduction of this House Bill. They have met since with the department of administration and explained their concern. Section 49 in H.B.493 becomes more of a convenience to in-state printers. He also stated that Oregon does not follow its own law. They are asking if the state of Montana, Department of Administration, would police

the current law as the Montana Code is written they would be protected by the 2% and they have no objections to 3%. He presented a amendment EXHIBIT 1.

GARY RENSMAN, representing himself, stated he is behind Mr. Verzani and supports his proposed change. EXHIBIT 1a

No other opponents.

REPRESENTATIVE YARDLEY closed saying in respect to the printers, there was considerable effort in the bill to promote Montana business.

QUESTION OF THE COMMITTEE:

SENATOR MARBUT asked, when you talk about purchasing, is it a dollar amount?

MR. BRUSSET said "no" it means "by rule". The audit report is just a paper schuffle.

SENATOR MARBUT referred to page 21 and asked what kind of dollar amount are you talking.

LAURIE EKANGER, Administrator of the purchasing division, stated that they have contracts that run under $300 and that that runs $7.2 million.

SENATOR MARBUT asked for a reaction on the letter of credit.

MR. BRUSETT stated that some letters of credit can be revoked but these are irrevocable.

MS. LANE, attorney for the department of administration referred the committee to page 21, line 5. She said she does believe that they would accept a letter of credit on a $7.2 million project.

SENATOR HAMMOND asked if this involves university systems.

It was stated that it does not involve local schools.

The hearing closed on H.B.51.

CONSIDERATION OF HOUSE BILL 506:
"AN ACT TO ADD "REPAIR" AND "MAINTENANCE" TO THE DEFINITION OF "CONSTRUCTION"; TO EXEMPT REPAIR AND MAINTENANCE PROJECTS FROM THE REQUIREMENT THAT THE BOARD OF EXAMINERS APPROVE PROJECTS OVER $25,000 AND THE REQUIREMENT THAT A PRIVATE ARCHITECT OR CONSULTING ENGINEER BE RETAINED FOR SUCH PROJECTS"..

SCOTT CURRY, representing the Governor's office said that they are in full support of this bill.

The hearing closed on House Bill 67.

ACTION ON HOUSE BILL 67:
SENATOR TOWE MOVED HOUSE BILL 67 BE CONCURRED IN.
MOTION PASSED. Senator Hammond voted "no"
Senator Story will carry the bill.

EXECUTIVE SESSION:

ACTION ON HOUSE BILL 493:
SUB COMMITTEE - Senator Marbut and Senator Towe

ACTION ON HOUSE BILL 506:
SENATOR TOWE said he has some amendments to present.
It was the decision of the chairman to come back to this bill.

ACTION ON HOUSE BILL 375:
SENATOR TOWE MOVED THE AMENDMENT on page 1, line 20 to
Strike: "and buildings."
Insert: ". The term also includes leases of buildings or other real property by the state or any agency thereof."
MOTION PASSED. Senator Story voted "no".

SENATOR TOWE MOVED THE AMENDMENT on page 2, line 25.
Following: "medicaid"
Insert: "or workers compensation"
MOTION PASSED.

SENATOR TOWE MOVED HOUSE BILL 375 BE CONCURRED IN AS AMENDED.
MOTION PASSED.

The meeting adjourned at 12:15 p.m.

CHAIRMAN, Senator Pete Story

ROLL CALL

STATE ADMINISTRATION COMMITTEE

47th LEGISLATIVE SESSION -- 1983 Date 3/7/83

NAME	PRESENT	ABSENT	EXCUSED	SENATE SEAT #
SENATOR PETE STORY, Chairman	X			45
SENATOR H. W. HAMMOND, Vice Ch	X			34
SENATOR REED MARBUT	X			44
SENATOR LARRY TVEIT	X			33
SENATOR R. MANNING	X			48
SENATOR LAWRENCE STIMATZ				7
SENATOR THOMAS TOWE	X			26
SENATOR GARY LEE	X			

Each day attach to minutes.

COMMITTEE ON _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
J. D. Holmes	MT. ARTS ADVOCACY	HB508	✓	
Maynard A. Olson	OPI	HB508	✓	
Janice S. VanPipen	Div. of Workers' Comp.	HB375	✓	
Dave Woodgerd	Dept. of State Lands	HB67	✓	
Jon Meredith	Dept. of Revenue	HB67	✓	
Ken Heikes	EMC	HB506 HB493	✓	
Stan Thurston	Thurston	HB493	✓	
Frederick Veeman	SELF	HB493		✓
John Bamkert	Colo Work	HB493	✓	
Gary Bramo	self	HB493		✓
RJ Best	Richard Parks	HB493	✓	
Camille Fallon	Mont Chamber	HB375	✓	
PHIL HAUCK	Dept of Admin	HB506	✓	
Ray Kuntz	The Flow Show Inc	HB493	✓	
Suzy Holt	MT Library Assoc.	HB508	✓	
Jack Noble	University System	HB493	✓	
Bill Lannan	Mont Univ System	HB506	✓	
Scott Cubbet	Dept of Revenue & Gov's Office	HB67	✓	
Dave Goss	Billings Chamber of Commerce	HB67	✓	

(Please leave prepared statement with Secretary)

EXHIBIT 1
State Admin.
March 7,1983

PROPOSED CHANGES TO SECTION 49, HB 493

Section 49 - All printing, binding and stationary work for which the state of Montana is chargeable, except the Montana Code Annotated, must be printed within the state of Montana by a responsible bidder, if his bid is not more than 2% higher than the bid of the lowest bidder who is a non-resident of this state, unless local facilities for production of a particular sort of printed matter is not available.

EXHIBIT 1a
State Admin.
3/7/83

1200 32nd Street South #75
Great Falls, Montana
March 1, 1983

Senator Pete Story, Chairman
Senate Administration Committee
Helena, Montana

Re: House Bill 493.

Dear Senator:

Your Committee will soon be considering the above House Bill. I must voice my objection to one section of the Bill. That is Section 49. Section 49 requires all printing, binding and stationery work to be done within the State, unless it meets the exemptions as listed.

I feel that it discriminates against myself and others, who represent out of state forms manufacturers. I cannot supply you with an accurate number of persons who would be affected, should this new Law be passed with this Section in tact; however, I feel it could run as high as 25 persons. In addition, it would place a burden on the Publications & Graphics Division to police. There is not a firm nor a group of firms, in our State, that can manufacture all the varieties of forms used by the State Agencies.

Presently, there is a system of "in-state" bid preferences that are allowed, to the in-state printers. I believe that it has worked well for everyone concerned in the past. It is my belief that it could continue to work well in the future.

I respectfully request that your committee delete this Section from the Bill, so that I might be able to continue to bid on all the State printing requirements. Montana is my home, and I hope that I will be able to continue to earn my living in my chosen profession.

Yours truly,

Gary Rensmon

Gary Rensmon

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
MONTANA STATE SENATE

March 24, 1983

The fifty-fourth meeting of the Senate State Administration Committee was called to order by Senator Pete Story on March 24, 1983 at 10:00 a.m. in room 331 of the State Capitol Building in Helena, Montana.

ROLL CALL: Roll was taken and a quorum was present. All members were present with the exception of Senator Lee.

EXECUTIVE SESSION:

This meeting is held to act on the remainder of the House Bills now in Committee.

ACTION ON HOUSE BILL 493:
Senator Towe presented the committee with handouts. EXHIBIT 1 shows the Description; Change from Present Law; Change from A.B.A. Model and Justification. EXHIBIT 2 is the Analysis and Justification of the Montana Procurement Act, H.B.493. EXHIBIT 3 is the amendments presented by Senator Towe. The amendments were reviewed one at a time and voted on accordingly.

MOTIONS BY TOWE according to page sequence of Exhibit 3.

Amendment on Page 1. DO PASS
Amendment on Page 2. DO PASS
Amendment on Page 3. DO PASS
Amendment on Page 4. DO PASS
Amendment on Page 5. DO PASS
Amendment on Page 6. DO PASS
Amendment on Page 7. DO PASS
Amendment on Page 8.
It was suggested by Dave Cogley, legal counsel, that "and type" might not be proper in this case. Senator Towe moved the following amendment:

Page 21, line 14.
Strike: "set in an amount considered
Insert: "determined"

DO PASS

Amendment on Page 9.
Senator Towe moved that the following be added to the amendment.

Following "contract,"
Add: "the department may adopt rules to assist it in making determination and in protecting the state in dealing with irrevocable letters of credit."

DO PASS

The words "letter of credit" was discussed as being legal or not. Mr. Glenn Drake was asked to speak and he said that he was told a letter of credit would not hold up in a bankruptcy case. SENATOR TOWE MOVED the following amendments after some discussion.

Page 21, line 18
Add: "not to exceed $100,000"
DO PASS

Amendment on Page 10. DO PASS
Amendmant on Page 11. DO PASS
Amendment on Page 12. DO PASS
Amendment on Page 13
Page 14

and amend:

Page 29, line 15.
Strike: "but is not limited to"

Amendment on Page 15. DO PASS
Amendment on Page 16. DO PASS
Amendment on Page 17. DO PASS
Senator Towe MOVED the following amendment:

Page 32, line 25.
Following: "to"
Strike: "the"

Other questions were posed; one regarding repealing the printing section. There were also questions regarding the o-fense and fine on page 37, lines 1 and 2.

SENATOR MARBUT had to be excused for another meeting for a short time. It was the opinion of the chair to hold further action on this bill until he returned.

ACTION ON HOUSE BILL 689:
SENATOR TOWE made the following MOTION. TO AMEND:

Page 4, line 22.
FOLLOWING: "part"
STRIKE: to the end of the page

Page 5, lines 1 and 2.
STRIKE: in its entirety.
DO PASS

SENATOR TOWE MOVED H.B.689 BE CONCURRED IN AS AMENDED. MOTION PASSED.

RETURN TO ACTION ON HOUSE BILL 493:
Amendment on Page 18. DO PASS
SENATOR TOWE MOVED the following amendment:

Page 22 and 23.
Strike: All of Section 25 in its entirety.
DO PASS

SENATOR TOWE MOVED HOUSE BILL 493 BE CONCURRED IN AS AMENDED. MOTION PASS. Senator Marbut will carry this bill.

ACTION ON HOUSE BILL 580:
SENATOR MARBUT MOVED TO TABLE H.B.580.
MOTION PASSED

The meeting adjourned at 11:30 a.m.

CHAIRMAN, Senator Pete Story

ROLL CALL

STATE ADMINISTRATION COMMITTEE

48th LEGISLATIVE SESSION -- 1983 Date March 24

NAME	PRESENT	ABSENT	EXCUSED	SENA SEAT
SENATOR PETE STORY, Chairman	X			45
SENATOR H. W. HAMMOND, Vice Ch	X			34
SENATOR REED MARBUT	X			44
SENATOR LARRY TVEIT	X			3
SENATOR R. MANNING	X			4
SENATOR LAWRENCE STIMATZ	X			
SENATOR THOMAS TOWE	X			2
SENATOR GARY LEE				1

Each day attach to minutes.

UPDATED 3.

MONTANA PROCUREMENT ACT

HB 493

TOPIC: GENERAL PURPOSE

Section No.	Description	Change From Present Law	Change from A.B.A. Model	Justification
1.	Short Title			
2.	Purpose	No comparable provision	No substantial change	Provides a general rationale and philosophical framework
3.	Definitions	No comparable provisions	Omit construction Replace Board/Officer with Department Restrict services and supplies definition to conform with other law (leave out consulting, land purchase, insurance, contruction etc.)	Definitions were adjusted to keep the present scope of purchasing laws and not expand into other areas
4.	Applicable State Laws are referenced, good faith required	No comparable provision. Prohibits writs of mandamus and prohibition to be used as remedy	Adds prohibition for use of writs of mandamus and prohibition.	Injunctions require hearing within ten days. No such time exists on other writs. No attorney fees are awarded on injunctions.
5.	Public Access to Records	No comparable provision	No substantial change Combined some sections.	

STATE ADMINISTRATION
EXHIBIT 1
3-24-83

TOPIC: PURCHASING ORGANIZATION AND DUTIES

Section No.	Description	Change From Present Law	Change from A.B.A. Model	Justification
6.	Duties of Department	Clarifies and enumerates specific duties. 18-4-101	Suggested organizational structure is revised to conform with executive reorganization.	Present law states Department. duties as "shall make or supervise the making of all purchases, leases or rentals." A.B.A. Model duties are more specific and provide better direction.
7.	Delegation of Authority	Clarifies Departments authority to delegate.	No substantial change	
8.	Procurement Rules	No comparable provisions	No substantial change	
9.	Authority To Remove or Suspend From Vendors List	Present law allows removal for failure to respond to 2 bid solicitations 18-4-202	No substantial change	This section expands and clarifies reasons for removing a vendor from the State bidders list, relating such action to cause
10.	Remedies Prior Or After Award	No comparable provisions	No substantial change	This section provides guidance if awards have been made in violation of the law.
11.	Collection of Procurement Data	No comparable provisions	No substantial change	

TOPIC: SOURCE SELECTION AND CONTRACT FORMATION

Section No.	Description	Change From Present Law	Change from A.B.A. Model	Justification
12.	Definitions	No comparable provision	No substantial change	
13.	Methods of Source Selection	This section establishes competitive sealed bidding as the state procurement method except as provided by law. Present law establishes the same method except for purchases under $2000. 18-4-202/18-4-203	No substantial change	Present law sets out two methods to purchase: 1)competitive bids and 2)competitive sealed bids. These terms are not defined and application of the methods is determined by dollar amount: over or under $2000. The model code will require clearer criteria for using purchasing methods other than competitive sealed bids and goes on to define such other methods. All of the options offered in the A.B.A. model are in following sections except for emergency purchases which are covered & retained in present law.
14.	Competitive Sealed Bids	No comparable provisions except 18-4-211/ 18-4-213	No substantial change	Defines the competitive sealed bid process
15.	Competitive Sealed Proposals	No comparable provision	No substantial change	Defines the competitive sealed proposal process. This section allows another procurement method- to be implemented by rule-to use when the state will benefit by some negotiation (computer software packages, for example). See page 21, A.B.A. Code book commentary.
16.	Small Purchases	This section allows the Department to set up a procedure. Present law prescribes a procedure for purchases under $2000. 18-4-203.	No substantial change	The present law requires that written bid requests be sent to all vendors on a state bidders' list for all items purchased under $20000.00. This is not practical or cost effective.

17.	Sole Source Procurement	No comparable provisions	no substantial change	This section allows a procurement method to be implemented by rule to be used when the purchase involves no competition. See A.B.A. Code book page 24 commentary.
18.	Cancellations Of Invitations To Bid, Rejection Of All Bids	Authority to reject all bids is essentially unchanged-18-4-213. Authority to cancel invitations is new although present law does not prohibit	No substantial change	
19.	Nonresponsibility Of Bidders	Clarification of Department authority	No substantial change	
20.	Prequalification of Supplier	Clarifies Department authority 18-4-202	No substantial change	
21.	Types Of Contracts	No substantial change 18-4-102	No substantial change	
22.	Approval of Accounting System	No comparable provisions	No substantial change	
23.	Contract Performance Security	Allows Department discretion on performance, labor and material. Bonds not less than 25% of contract. Allow irrevocable letters of credit as security.	No comparable provisions	Should reduce costs to the state of 100% performance bonds on contracts where state's risk is less then 100% of the contract (janitorial contracts). Should increase competition and thus lower costs since paperwork is less for business, and insurance is good for the state.
24.	Contracts	No change in 3 year time period, except for data processing and telecommunications contracts (10 yrs allowed). Adds criteria for extending and authority to cancel if funds are not appropriated 18-4-102	A.B.A. Model allows contracts for "any period of time deemed to be in the best interests of the State"; this has been changed to specify time limits. Specific reimbursement provisions have been deleted relating to cancellations	Time limitations are preferred Cancellation provisions should be part of individual contract negotiations

25.	Consultation with the legislature	No comparable provisions	No comparable provisions	House State Administration Committee added this section for long term telecommunication and data processing equipment as a safeguard.
26.	Right to Inspect Plant	No comparable provisions	No substantial change	Nothing presently prohibits the State from making this a provision of a contact.
27.	Finality of Determination	Clarifies present authority 18-4-213	No substantial change	
28.	Reporting Anti-Competitive Practices	Present law prohibits such practices. This section requires they also be reported to Attorney General. 18-4-105	No substantial change	
29.	Retention of Records	No comparable provisions	References Montana specific records retention laws.	
30.	Records of Sole Source or Emergency Procurements	No comparable provisions	Change 5 year retention requirement to 4 year to be consistent with present retention schedules. Eliminate special reporting requirement.	

TOPIC: SPECIFICATIONS

Section No.	Description	Change From Present Law	Change from A.B.A. Model	Justification
31.	Definitions	No comparable provisions	Omit construction	
32.	Duties of Department	No comparable provisions	No substantial change	This section charges the Department with responsibility for standardizing product specifications for the State, where appropriate. Studies of State purchasing and other state agencies have recommended that this service be provided by the Department.
33.	Using Agencies' Advice in Developing Specifications.	No comparable provisions	No substantial change	
34.	Competition Must be Promoted by Specifications.	No comparable provisions	No substantial change	

TOPIC: CONTRACT CLAUSES/COST PRINCIPLES

Section No.	Description	Change From Present Law	Change from A.B.A. Model	Justification
35.	Contract Clauses	No comparable provisions. Present law does not prohibit such clauses.	No substantial change	This section clarifies that the department may issue contract clauses to cover situations that frequently develop.
36.	Cost Principles	No comparable provisions	No substantial change	This section requires the Department to issue rules to serve as guidance when estimated or incurred costs must be determined, such as when contracts are terminated, when contracts are modified, when no competition exists.

TOPIC: SUPPLY MANAGEMENT

Section No.	Description	Change From Present Law	Change from A.B.A. Model	Justification
37.	Definitions	No comparable provisions. Supplements sections 18-6-101 thru 18-6-103.	Eliminated definitions for "excess supplies," "expendable supplies" and "nonexpendable supplies."	The definitions that were dropped were based on Federal government distinctions and required additional tracking too burdensome for Montana.
38.	Supply Management Rules	No comparable provisions	No substantial change	This section requires the Department to adopt rules for state supply management.
39.	Allocation of Proceeds	Allows the Department to deduct a reasonable handling fee.	A.B.A. Model allows the Department discretion over the sale proceeds.	A handling fee is necessary to cover the cost of the supplies property activities. Allocation of proceeds is already in the law 18-6-101.

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TOPIC: INTERGOVERNMENTAL RELATIONS

Section No.	Description	Change From Present Law	Change from A.B.A. Model	Justification
40.	Definitions	No comparable provisions	Wording simplified	
41.	Cooperative Purchasing	Counties may enter into such arrangements presently under 7-5-2308	No substantial change	This section allows the state to enter into purchasing agreements, to jointly purchase items, with any potitical subdivision. Creates the potential for increased cost savings and convenience.
42.	Sale, Acquisition Or Use Of Public Procurement Units	No comparable provisions	No substantial change	This section allows the Department to purchase from other political subdivisions.
43.	Cooperative Use Of Supplies And Services	No comparable provisions	No substantial change	Allows the Department to share supplies with other political subdivisions.
44.	Joint Use of Facilities	No comparable provisions	No substantial change	Allows the Department to share facilities with other political subdivisions.
45.	Supply Of Information And Services Fees	No comparable provisions	No substantial changes	Allows the Department to provide services to local jurisdictions and allows the Department to collect fees covering the cost of providing such services.
46.	Review of Procurement Requirements	No comparable provisions	No substantial change	Allows the Department to collect and distribute procurement information.

TOPIC: APPLICATION

Section No.	Description	Change From Present Law	Change from A.B.A. Model	Justification
47.	Application	No comparable provisions	No substantial change except to allow Section 24 to be retroactive	Allows the Department to convert telecommunication contract from lease to purchase for more advantageous financing.

TOPIC: LOCAL GOVERNMENT

Section No.	Description	Change From Present Law	Change from A.B.A. Model	Justification
48.	Local Government Adoption of Pro-Curement Requirements	No comparable provisions	No substantial changes	House State Administration Committee added this provision at the request of local governments.

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TOPIC: PRINTING

Section No.	Description	Change From Present Law	Change from A.B.A. Model	Justification
49.	Instate Printing Required	Present law provides for 2% instate bidders' preference (18-7-103) except for 10% preference on Montana Supreme Court decisions and all session laws and resolutions (18-7-102). This section essentially allows the Department to establish a preference amount by rule and 18-7-102 and 18-7-103 are repealed.	No comparable provisions in A.B.A.	An advisory concil of instate printers has recommended this provision to the Department. The effect of this provision will be to encourage expansion of the instate printing industry's manufacturing capabilities. General procurement other than printing provides for 3% instate preference (18-1-102). Legislation has been introduced (HB 786) to increase this general preference to 5%.

TOPIC: INCORPORATION INTO LAW

Section No.	Description	Change From Present Law	Change from A.B.A. Model	Justification
50.	Amending Section 18-4-104 Purchases Exempt From General Requirements	References changed to refer to this bill	No comparable provisions	
51.	Amending Section 18-7-104 Union Label	References changed to refer to this bill	No comparable provisions	
52.	Amending 18-7-105 Penalties	References changed to refer to this bill	No comparable provisions	
53.	Amending 87-1-209 Acquisition And Sale Of Lands And Water	Omitting reference to 18-4-102. No substantial change.		
54.	Codification	Requiring codification into Title 18, MCA.		
55.	Severability			

56.	Repealer	Repeals 18-4-101 General Duties of the Department 18-4-102 Contract terms and time limit 18-4-201 Requisitions for supplies 18-4-202 Contracts over Two Thousand Dollars 18-4-203 Contracts under Two Thousand Dollars 18-7-102 Montana Printers Preferred 18-7-103 State Printing-lowest bid-resident preference	Model code addresses these provisions Replaced by Section 49
57.	Effective Date	Extends effective date to January 1, 1984, except for sections 24 and 47 which apply to telecommunication and data processing equipment.	Allows the Department adequate time to work with state agencies and other interested parties on preparing the procedures through rule to implement this bill. Allows the Department to convert the 10 year state telecommunication lease to a purchase and thereby obtain better financing.

UPDATED 3/83

STATE ADMINISTRATION
EXHIBIT 2
3-24-83

HB 493

MONTANA PROCUREMENT ACT

Analysis and Justification

I. Background

Montana State Purchasing Division has been the subject of formal studies conducted by the Council of State Governments, the Legislative Auditor, the Department of Administration Director's Office and the Governor's Council on Management. All four have stated concern that Montana's Codes are unclear and/or unworkable.

Montana's purchasing laws were written in 1923 and have been revised in a piece-meal fashion since. They are particularly restrictive with regard to small day-to-day purchases and unclear with regard to the Department's ability to delegate purchasing authority. In trying to address these particular concerns, the Department concluded that a new look at State purchasing was in order rather than another piecemeal adjustment of the present Codes.

Recommended as a resource by the Council on Management Report was the American Bar Association's Model Procurement Code for State and Local Government. This code was introduced in its entirety in the 47th Legislature as HB 663, and the Department opposed it. HB 663 covered all possible purchases (construction, consulting services, insurance are examples), redefined the state administrative structure, and set up administrative remedies separate and unique for purchasing. The Department has taken the A.B.A. Model Code and adapted it to reflect the scope of present general purchasing and to fit within Montana's present administrative structure and remedies. The resulting bill will allow the recommendations of all four studies to be carried out by providing clear guidance and recognizing the fundamentals of sound modern public procurement.

II. Change From Present Law

Montana's Purchasing Division alone purchases approximately $44,000,000 of supplies and services, issuing 8,000 purchase orders annually. In the complex market place of the 1980's questions, exceptions and unique circumstances arise daily for which no guidance exists in the present Montana Codes. In addition, no clear authorization is provided for the Department to establish guidance for State agencies for these difficult questions. Montana's Codes were written in 1923 and certainly many present day situations were simply not anticipated at that time.

Montana's general procurement laws are presently contained primarily in the twelve sections that make up Chapter 4 of Title 18, MCA. This bill will repeal five of those sections

and expand on the remaining provisions by defining terminology and addressing major duties as outlined in the A.B.A. Model Code. Present law does not address most of these integral duties as set forth in the A.B.A. Model Code.

A. General Purpose

Sections 1 through 5 provide the overall rationale, philosophical framework and definitions for state purchasing.

There are no comparable sections in present law. The definitions have been reduced in scope from the A.B.A. Model Code to be consistent with the present scope of law for general purchasing (present law excludes consulting services, insurance and construction).

B. Purchasing Organization and Duties

Sections 6 through 11 set out the duties of the Department of Administration to implement and carry out the provisions of this bill. These provisions specifically charge the Department with rule making responsibility, clarify the Department's authority to delegate purchasing to other agencies and allow the Department to remove vendors from a bidders' list for cause.

Present law provides no guidance on these issues. These sections replace 18-4-101 "General Duties of the Department" which is repealed in Section 53.

C. Source Selection and Contract Formation

1. Sections 12 through 20 identify and define modern purchasing practices. These sections specifically designate competitive sealed bids as the state's means of purchase and then recognize procedures to handle exceptions.

   Present law sets out in sections 18-4-202 and 18-4-203 two methods to purchase state supplies and services: 1) competitive bids (obtained by written requests sent to all vendors on a list) for all purchases under $2,000 and 2) competitive sealed bids for purchases over $2,000. Some exceptions are noted such as fresh fruits and vegetables and emergencies. These methods, based on an arbitrary dollar amount, are not defined and do not reflect modern public purchasing practices and will be replaced by this bill. Sections 18-4-201, 18-4-202, 18-4-203 are repealed in Section 53.

2. Sections 21 through 27 relate to state contract terms, extensions, renewals and the authority to cancel such contracts if funds are not appropriated.

   Present general procurement law does not address contract terms except to provide a time restriction for contracts of three years in section 18-4-102. This restriction has been maintained with an exception to ten years for data processing and telecommunication equipment contracts. This exception for data processing and telecommunications is considered by the Department to be a prerequisite for good management in these areas allowing the state to take advantage of the substantial savings generated by longer term fixed cost agreements. Section 18-4-102 of the present law is repealed in Section 53.

   Section 23 exempts purchases under this bill from the performance, labor and materials bond requirements of Title 18, Chapter 2, Construction contracts. This section sets out bonding requirements that are essentially the same as present law except that performance, labor and material security may be less than one hundred percent of the contract and irrevocable letters of credit may be accepted as security. These changes have been recommended to the Department by a wide variety of individuals (businessmen, bonding professionals, other state agency representatives) as reasonable cost saving measures.

3. Sections 28 through 30 require reporting anticompetitive practices to the Attorney General and define record keeping requirements. Present general procurement law has no comparable provisions.

D. Specifications

Sections 31 through 34 charge the Department with responsibility for developing competitive product specifications, where appropriate. This is a recognized part of public procurement activities which saves both time and money.

Present law does not address these specifications.

E. Contract Clauses

Section 35 clarifies that the Department may issue contract clauses to cover situations that frequently develop in the purchasing process.

Present law does not prohibit such clauses.

F. Cost Principles

Section 36 requires the Department to issue rules to serve as guidance when estimated or incurred costs must be reimbursed, such as when contracts are terminated or modified or when no competition exists.

Present general procurement law does not address this issue.

G. Supply Management

Sections 37 through 39 define state surplus property and require the Department to adopt rules regarding management and disposition of surplus property.

Present law, Title 18, Chapter 6, addresses the sale of surplus property and is not changed by this bill except that the Department is authorized to deduct a reasonable handling fee from the proceeds of surplus sales.

H. Intergovernmental Relations

Sections 40 through 46 allow the state to enter into purchasing arrangements with other governmental jurisdictions. The state is allowed to provide purchasing services to local jurisdictions and to establish a fee schedule for such services.

Presently the state can agree to serve as purchasing agent for counties under Section 7-5-2308, M.C.A.

I. Application

Section 47 provides that the provisions of this bill are retroactive only for telecommunication and data processing systems (Section 24) and states other general application provisions.

J. Local Government

Section 48 allows political subdivisions or school districts to adopt all or part of the bill.

K. Printing

Section 49 requires all public printing, binding and stationery work to be performed within the state and prescribes certain exceptions. The Department has determined that adequate competition exists within Montana to allow this provision at no substantial cost

increase to state government while providing benefits to the state economy.

Present laws 18-7-102 and 18-7-103 established ten percent and two percent instate bidders' preference respectively. These sections are repealed in this bill.

L. Incorporation into State Law

Sections 50 through 57 provide instructions for incorporating this bill into state law.

Ten existing sections are repealed. In addition to the sections replaced by this Code, sections 18-7-111 through 18-7-113 which describe state printing specifications are repealed. These sections have not been updated since 1947 and refer to outdated equipment and pricing techniques.

With the exception of sections 24 and 47, the effective date of this bill has been extended to January 1, 1984 to allow the Department adequate time to meet rule making responsibilities and effect an orderly transition.

III. Major Changes from A.B.A. Model Code

The A.B.A. Model Code has twelve Articles:

Article 1. General Provisions - The A.B.A. Code is written to apply to every kind of purchase. The definitions have been used to scale down the application to what is covered presently under Title 18, Chapter 4.

Article 2. Procurement Organization - The organization outlined by the A.B.A. Code has been changed to fit into Montana State organization.

Article 3. Source Selection and Contract Formation - Procedures for selecting consulting services have been deleted.

Article 4. Specifications - No major change except to reduce scope as noted under Article 1.

Article 5. Procurement of Construction, Architect and Engineer and Land Surveying Services - This entire Article has been deleted.

Article 6. Modification and Termination of Contracts for Supplies and Services - No major change.

Article 7. Cost principles - No major change.

Article 8. Supply Management - No major change.

Article 9. Legal and Contractual Remedies - This Article has been deleted except for the authority to remove and suspend vendors from the bidders' list. The provisions of this Article currently exist in Title 2, chapter 4, part 7, M.C.A.

Article 10. Intergovernmental Relations - No major change.

Article 11. Assistance to Small Disadvantaged Business; Federal Assistance or Contract Procurement Requirements - This Article has been deleted. Montana's preference and special conditions exist in Title 18, Chapter 1 and Title 18, Chapter 5.

Article 12. Ethics in Public Contracting - This Article has been deleted. The provisions of this Article currently exist in Title 2, Chapter 2, M.C.A.

State Admin.
March 24, 1983

HB 493

Page 5, line 20
Following: "by"
Strike: "private"

HB 493

Page 7, line 22 through line 24
Strike: subsection (c) in its entirety

HB 493

Page 9, line 7 through line 18
Following: line 6
Strike: line 7 through line 18 in its entirety
Renumber: subsequent subsections

X8

HB 493

Page 10.
Following: line 10
Insert: "(f) failure to respond to a number of solicitations over a period of time as determined by the department in accordance with rules and after adequate written notice to the affected person of the intent to remove or suspend."

HB 493

Page 10, line 16.
Following: " (1)"
Strike: the remainder of line 16 and line 17 in its entirety
Insert: "If"

Page 10, line 19.
Following: " law"
Insert: ", the department may apply the remedies provided in subsections (2) and (3)"

Page 11
Following: line 17
Insert: " In the event the matter is reviewed by a court, the court may apply the same remedies provided in subsections (2) and (3)."

HB 493

Page 14, line 12
Following: "bids."
Insert: "Each bidder has the right to be present, either in person or by agent, when the bids are opened and has the right to examine and inspect all bids."

HB 493

Page 20
Following: Lenè 25
Insert: "required to be"

HB 493

Page 21, line 14
Following: "amount"
Insert: "and type"

HB493

Page 21.
Following: line 18
Insert: " In determining the amount and type of security required for each contract, the department should consider the nature of the performance and the need for future protection to the state."

HB 493

Page 23, line 7 through line 11
Strike: Section 26 in its entirety
Renumber: subsequent sections

HB 493

Page 23, line 12 through line 16
Strike: Section 27 in its entirety
Renumber: subsequent sections

Page 26, line 16.
Following: "adopt"
Strike: the remainder of line 16 through "limited to" on line 17

HB 493

Page 30, line 3
Following: "30"
Strike: "and ~~36~~ 37 through ~~38~~ 39"

Page 29, line 23 and 24.
Strike: " and ~~36~~ 37 through
~~38~~ 39 =

HB 493

Page 30, line 12
Strike: "director"
Insert: "department"

Page 31, line 6
Strike: "director"
Insert: "department"

Page 31, line 15
Strike: "director"
Insert: "department

Page 31, line 21
Strike: "director"
Insert: "department"

Page 31, line 25
Strike: "director"
Insert: "department"

Page 32, line 1
Strike: "director"
Insert: "department"

HB 493

Page 31, Line 24 through Line 1 on page 32
Following: "units." on Line 24
Strike: Line 24 through "units." on Line 1, page 32

HB 493

Page 33, Line 1
Following: "construction"
Strike: "of public works"
Insert: "contracts"

HB 493

Page 33, line 7 through page 34, line 11.
Strike: Section 49 in its entirety
Insert: "Section 49. State printing, binding, and stationary work -- resident preference. All printing, binding, and stationary work for the state of Montana, except the Montana Code Annotated and certificates of appointment and election to office, must be printed in the state of Montana by a responsible bidder if his bid does not exceed the lowest bid by a nonresident printer by more than the percentage in 18-1-102."

SENATOR TOWE'S PROPOSED AMENDMENTS

JUDICIARY COMMITTEE
EXHIBIT 3
3-24-83
PAGE 1 OF 1

HB 493

Page 5, line 20
Following: "by"
Strike: "private"

HB 493

Page 7, line 22 through line 24
Strike: subsection (c) in its entirety

HB 493

Page 9, line 7 Through line 18
Following: line 6
Strike: line 7 Through line 18 in its entirety
Renumber: subsequent subsections

HB 493

Page 10.
Following: line ~~10~~ 6
Insert: "(~~A~~ b) failure to respond to a number of solicitations over a period of time as determined by the department in accordance with rules and after adequate written notice to the affected person of the intent to remove or suspend."

HB 493

Page 10, line 16.
Following: " (1)"
Strike: the remainder of line 16 and line 17 in its entirety
Insert: "If"

Page 10, line 19.
Following: " law"
Insert: ", the department may apply the remedies provided in subsections (2) and (3)"

Page 11
Following: line 17
Insert: " In the event the matter is removed by a court, the court may apply the same remedies provided in subsections (2) and (3)."

HB 493

Page 14, line 12
Following: "bids."
Insert: "Each bidder has the right to be present, either in person or by agent, when the bids are opened and has the right to examine and inspect all bids."

HB 493

Page 20
Following: line 25
Insert: "required to be"

HB 493

changed see Brue

Page 21, line 14

Following: "amount"

Insert: ~~"and type"~~

*

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HB493

Page 21.
Following: line 18
Insert: " In determining the amount and type of security required for each contract, ~~the~~ department (X) ~~should consider the nature of the performance and the need for future protection to the state.~~ "

* Tone Amend

"The court may [illegible] irrevocable [illegible] irrevocable

3rd. Line 4

following credit

add: not to exceed $100,000

HB 493

Page 23, line 7 through line 11
Strike: Section 26 in its entirety
Renumber: subsequent sections

HB 493

Page 23, line 12 through line 16
Strike: Section 27 in its entirety
Renumber: subsequent sections

Page 26, line 16.
Following: "adopt"
Strike: the remainder of line 16
through "limited to" on line 17

(13)

Page 29, line 23 and 24.
Strike: " and ~~36~~ 37 through
~~38~~ 39 =

Towe * pg 29 line 15
STRIKE "BUT IS NOT LIMITED TO"

HB 493

Page 30, line 3
Following: "30"
Strike: "and ~~36~~ 37 through ~~38~~ 39"

HB 493

Page 30, line 12
Strike: "director"
Insert: "department"

Page 31, line 6
Strike: "director"
Insert: "department"

Page 31, line 15
Strike: "director"
Insert: "department

Page 31, line 21
Strike: "director"
Insert: "department"

Page 31, line 25
Strike: "director"
Insert: "department"

Page 32, line 1
Strike: "director"
Insert: "department"

HB 493

Page 31, line 24 through line 1 on page 32
Following: "units." on line 24
Strike: line 24 through "units." on line 1, page 32

HB 493

Page 33, line 1
Following: "construction"
Strike: "of public works"
Insert: "contracts"

HB 493

Page 33, line 7 through page 34, line 11.
Strike: Section 49 in its entirety
Insert: "Section 49. State printing, binding, and stationary work -- resident preference. All printing, binding, and stationary work for the state of Montana, except the Montana Code Annotated and certificates of appointment and election to office, must be printed in the state of Montana by a responsible bidder if his bid does not exceed the lowest bid by a nonresident printer by more than the percentage in 18-1-102."

STANDING COMMITTEE REPORT

MARCH 24 19 83

MR. PRESIDENT

We, your committee on STATE ADMINISTRATION

having had under consideration HOUSE Bill No. 493

Yardley (Marbut)

Respectfully report as follows: That HOUSE Bill No. 493

Third reading copy, be amended as follows:

1. Page 1, lines 17 and 20
Strike: "48"
Insert: "45"

2. Page 2, line 14.
Strike: "48"
Insert: "45"

3. Page 5, line 12.
Strike: "48"
Insert: "45"

4. Page 5, line 20.
Strike: "private"

~~DO PASS~~

CONTINUED..

Chairman.

STATE PUB. CO.
Helena, Mont.

MARCH 24 19 83

5. Page 6, lines 4, 8, 13, 15, and 16.
Strike: "48"
Insert: "45"

6. Page 7, lines 2, 8, 9, 13, and 15.
Strike: "48"
Insert: "45"

7. Page 7, line 19.
Following: "state;"
Insert: "and"

8. Page 7, line 21.
Following: "state"
Strike: remainder of line 21 through "services" on line 24

9. Page 9, lines 7 through 18.
Strike: subsections (a), (b), and (c) in their entirety
Renumber: subsequent subsections

10. Page 10, line 6.
Strike: "and"
Following: line 6
Insert: "(b) failure to respond to a number of solicitations over a period of time as determined by the department in accordance with rules, and after adequate written notice to the affected person of the intent to remove or suspend; and"
Renumber: subsequent subsections

11. Page 10, line 16.
Following: "(1)"
Strike: remainder of line 16 and line 17 in their entirety
Insert: "If"

12. Page 10, line 19.
Following: "law"
Insert: ", the department may apply the remedies provided in subsections (2) and (3)"

13. Page 11.
Following: line 17
Insert: "(4) In the event the matter is reviewed by a court, the court may apply the same remedies provided in subsections (2) and (3)."

14. Page 12, line 5.
Strike: "30"
Insert: "27"

CONTINUED..

15. Page 12, line 10.
Strike: "48"
Insert: "45"

16. Page 14, line 12.
Following: "bids."
Insert: "Each bidder has the right to be present, either in person or by agent, when the bids are opened and has the right to examine and inspect all bids."

17. Page 14, line 20.
Strike: "48"
Insert: "45"

18. Page 20.
Following: line 25
Insert: "required to be"

19. Page 21, line 4.
Following: "credit"
Insert: "not to exceed $100,000"

20. Page 21, line 14.
Following: "amount"
Insert: "and type"

21. Page 21, line 15.
Strike: "set in an amount considered"
Insert: "determined"

22. Page 21.
Following: line 18
Insert: "In determining the amount and type of security required for each contract, the department shall consider the nature of the performance and the need for future protection to the state. The department may adopt rules to assist it in making this determination and in protecting the state in dealing with irrevocable letters of credit."

23. Page 21, line 23.
Strike: "48"
Insert: "45"

24. Page 22.
Following: line 23
Strike: Sections 25 through 27 in their entirety
Renumber: subsequent sections

CONTINUED..

Chairman.

STATE PUB. CO.
Helena, Mont.

25. Page 24, line 12.
Strike: "31"
Insert: "28"
Strike: "34"
Insert: "31"

26. Page 26, line 16.
Following: "adopt"
Strike: remainder of line 16 through "to" on line 17

27. Page 27, line 17.
Strike: "37"
Insert: "34"
Strike: "39"
Insert: "36"

28. Page 28, line 16.
Strike: "40"
Insert: "37"
Strike: "46"
Insert: "43"

29. Page 29, line 15.
Strike: "but is not limited to"

30. Page 29, line 23.
Following: "29"
Strike: remainder of line 23 through "39" on line 24
Insert: "27"

31. Page 30, line 3.
Strike: "30" through "39"
Insert: "27"

32. Page 30, line 12.
Strike: "director"
Insert: "department"

33. Page 31, lines 6, 15, and 21.
Strike: "director"
Insert: "department"

34. Page 31, line 24.
Following: "units."
Strike: remainder of line 24 through "units." on line 1, page 32.

35. Page 32, line 1.
Strike: "director"
Insert: "department"

CONTINUED..

Chairman.

STATE PUB. CO.
Helena, Mont.

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36. Page 32, lines 8, 12, 16, 20, 21, and 25.
Strike: "48"
Insert: "45"

37. Page 32, line 19.
Strike: "40"
Insert: "37"
Strike: "46"
Insert: "43"

38. Page 32, line 25.
Strike: "the"

39. Page 33, line 1.
Strike: "of public works"
Insert: "contracts"

40. Page 33, line 5.
Strike: "48"
Insert: "45"

41. Page 33.
Following: line 6
Strike: section 49 in its entirety
Insert: "Section 46. State printing, binding, and stationery work -- resident preference. All printing, binding, and stationery work for the state of Montana, except the Montana Code Annotated and certificates of appointment and election to office, must be printed in the state of Montana by a responsible bidder if his bid does not exceed the lowest bid by a nonresident printer by more than the percentage in 18-1-102."

42. Page 34, line 16.
Strike: "48"
Insert: "45"

43. Page 35, line 5.
Strike: "48"
Insert: "45"

44. Page 36, lines 10, 13, 16, and 25.
Strike: "48"
Insert: "45"

45. Page 36, lines 10, 14, 17, and 25.
Strike: "49"
Insert: "46"

CONTINUED..

Chairman.

46. Page 39, line 23 and line 25.
Strike: "48"
Insert: "45"

47. Page 39, line 25.
Strike: "49"
Insert: "46"

48. Page 40, line 3.
Strike: "49"
Insert: "46"

49. Page 40, lines 15 and 17.
Strike: "47"
Insert: "44"

And, as so amended
BE CONCURRED IN

SENATOR PETE STORY Chairman.

STATE PUB. CO.
Helena, Mont.

STATEMENT OF INTENT

HOUSE BILL 493

House State Administration Committee

A statement of intent is required for this bill because it grants rulemaking authority to the Department of Administration for the purpose of implementing the procurement procedures established by the bill. The bill is based upon the American Bar Association Model Procurement Code for State and Local Governments. The Model Code was drafted on the concept that it should be a short statute providing the fundamentals of sound procurement that should be implemented by rules consistent with the statutory framework.

It is intended that the Department look to the Recommended Regulations for the Model Procurement Code for State and Local Governments adopted by the American Bar Association for guidance in adopting rules implementing the provisions of this bill.

REFERENCE BILL
HB 493

HOUSE BILL NO. 493

INTRODUCED BY YARDLEY, DOVER

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS GOVERNING PROCUREMENT OF SUPPLIES AND SERVICES FOR STATE AGENCIES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTIONS 18-4-104, 18-7-104, 18-7-105, AND 87-1-209, MCA; AND REPEALING SECTIONS 18-4-101, 18-4-102, 18-4-201 THROUGH 18-4-203, 18-4-211 THROUGH 18-4-214, 18-7-102, 18-7-103, AND 18-7-111 THROUGH 18-7-113, MCA; AND PROVIDING ~~A--DELAYED--EFFECTIVE DATE~~ EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through ~~46~~ 48 45] may be cited as the "Montana Procurement Act".

NEW SECTION. Section 2. Purpose. The underlying purposes and policies of [sections 1 through ~~46~~ 48 45] are to:

(1) simplify, clarify, and modernize the law governing procurement by the state of Montana;

(2) permit the continued development of procurement policies and practices;

(3) make as consistent as possible the procurement laws among the various jurisdictions;

(4) provide for increased public confidence in the procedures followed in public procurement;

(5) ensure the fair and equitable treatment of all persons who deal with the procurement system of the state;

(6) provide increased economy in state procurement activities and maximize to the fullest extent practicable the purchasing value of public funds of the state;

(7) foster effective, broad-based competition within the free enterprise system; and

(8) provide safeguards for the maintenance of a procurement system of quality and integrity.

NEW SECTION. Section 3. Definitions. In [sections 1 through ~~46~~ 48 45], unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

(1) "Business" means a corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity.

(2) "Change order" means a written order, signed by an authorized department representative, directing the contractor to make changes which the changes clause of the contract authorizes the department to order without the consent of the contractor.

REFERENCE BILL

(3) "Contract" means all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies or services.

(4) "Contract modification" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract accomplished by mutual action of the parties to the contract.

(5) "Contractor" means a person having a contract with a governmental body.

(6) "Data" means recorded information, regardless of form or characteristic.

(7) "Department" means the department of administration.

(8) "Designee" means a duly authorized representative of a person holding a superior position.

(9) "Director" means the director of the department of administration.

(10) "Employee" means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for a governmental body.

(11) "Governmental body" means a department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other

entity, instrumentality, or official of the executive, legislative, or judicial branch of this state, including the board of regents and the Montana university system.

(12) "Grant" means the furnishing by the federal government of assistance, whether financial or otherwise, to a person or agency to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies or services. A contract resulting from such an award is not a grant but a procurement contract.

(13) "Person" means any business, individual, union, committee, club, other organization, or group of individuals.

(14) "Printing" means the reproduction of an image from a printing surface generally made by a contact impression that causes a transfer of ink or the reproduction of an impression by a photographic process and includes graphic arts, typesetting, binding, and other operations necessary to produce a finished printed product. Printing does not include rebinding or repair by a library or an office, department, board, or commission thereof of books, journals, pamphlets, magazines, and literary articles held as a part of its library collection.

(15) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. It

also includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(16) "Procurement officer" means any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of his authority.

(17) "Purchasing agency" means any governmental body, other than the department, which is authorized by [sections 1 through ~~46~~ 48 45] or its implementing rules or by way of delegation from the director to enter into contracts.

(18) "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. The term does not include consulting services as defined in 18-8-102, those services listed in 18-8-103, employment agreements or collective bargaining agreements, the provision by ~~private~~ providers of human services regulated by a state agency, or services related to construction contracts.

(19) "Supplies" means all property except as otherwise provided by law, including but not limited to equipment,

materials, printing, and commodities, and excluding land or any interest in land.

(20) "Using agency" means any governmental body of the state which utilizes any supplies or services procured under [sections 1 through ~~46~~ 48 45].

NEW SECTION. Section 4. Supplementary general principles of law applicable -- requirement of good faith. (1) Unless displaced by the particular provisions of [sections 1 through ~~46~~ 48 45], the principles of law and equity, including the Uniform Commercial Code, the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy, supplement the provisions of [sections 1 through ~~46~~ 48 45], except that writs of mandamus and prohibition issued pursuant to Title 27, chapters 26 and 27, may not be used as a remedy for violations of [sections 1 through ~~46~~ 48 45].

(2) [Sections 1 through ~~46~~ 48 45] require all parties involved in the negotiation, performance, or administration of state contracts to act in good faith.

NEW SECTION. Section 5. Public access to procurement information -- records -- retention. (1) Procurement information is a public writing and must be available to the public as provided in 2-6-102.

(2) All procurement records shall be retained and

disposed of in accordance with the state records management program.

(3) Written determinations required by [sections 1 through ~~46~~ 48 45] must be retained in the appropriate official contract file of the department or the purchasing agency administering the procurement in accordance with the state records management program.

NEW SECTION. Section 6. General procurement authority and duties of department -- rules. (1) Except as otherwise provided in [sections 1 through ~~46~~ 48 45], the department shall adopt rules, consistent with [sections 1 through ~~46~~ 48 45], governing the procurement and disposal of any and all supplies and services to be procured by the state. The department shall consider and decide matters of policy within the provisions of [sections 1 through ~~46~~ 48 45]. The department may audit and monitor the implementation of its rules and the requirements of [sections 1 through ~~46~~ 48 45].

(2) Except as otherwise specifically provided by law, the department shall, in accordance with its rules:

(a) procure or supervise the procurement of all supplies and services needed by the state; AND

(b) sell, trade, or otherwise dispose of surplus supplies belonging to the state; ~~and~~

~~(c) establish and maintain programs for the inspection, testing, acceptance, and inventory of supplies and services.~~

(3) Nothing contained herein shall preclude the state from doing its own printing on its own printing facilities.

NEW SECTION. Section 7. Delegation of authority by department. Subject to the rules of the department, the director may delegate procurement authority to designees or to any state department, agency, or official.

NEW SECTION. Section 8. State procurement rules -- delegation -- existing rights. (1) Rules shall be adopted by the department in accordance with the applicable provisions of Title 2, chapter 4.

(2) The department may not delegate its power to adopt rules.

(3) No rule may change a commitment, right, or obligation of the state or of a contractor under a contract in existence on the effective date of such rule.

NEW SECTION. Section 9. Authority to remove or suspend from vendors' list. (1) The department may remove a person for cause from consideration for award of contracts. The removal may not be for a period of more than 3 years.

(2) The department may suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in activities that may lead to removal. The suspension may not be for a period exceeding 3 months unless an indictment has been

issued for an offense that would be a cause for removal under subsection (3), in which case the suspension must, at the request of the attorney general, remain in effect until after the trial of the suspended person. The authority to remove or suspend must be exercised in accordance with rules adopted by the department.

(3) The causes for removal or suspension include the following:

~~(a)--conviction-for-commission-of-a-criminal-offense-as-an-incident-to-obtaining-or-attempting-to-obtain-a-public-or-private-contract-or-subcontract-or--in--the--performance--of-such-contract-or-subcontract~~

~~(b)--conviction--under--state--or--federal--statutes-of-embezzlement,--theft,--forgery,--bribery,--falsification--or-destruction--of-records,-receiving-stolen-property,-or-other-offense--indicating--a--lack--of--business--integrity--which-currently,-seriously,-and-directly-affects-responsibility-as-a-state-contractor~~

~~(c)--conviction---under---state--or--federal--antitrust-statutes-arising-out-of-the-submission-of-bids-or-proposals~~

~~(d)~~(A) violation of contract provisions, as set forth in ~~subsection--(3)(d)(i)--and--(3)(d)(ii)~~ (II) AND (III) OF SUBSECTION (3)(A), of a character which is regarded by the department to be so serious as to justify removal action:

(i) deliberate failure without good cause to perform

in accordance with the specifications or within the time limit provided in the contract; or

(ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for removal; and

(B) FAILURE TO RESPOND TO A NUMBER OF SOLICITATIONS OVER A PERIOD OF TIME AS DETERMINED BY THE DEPARTMENT IN ACCORDANCE WITH RULES, AND AFTER ADEQUATE WRITTEN NOTICE TO THE AFFECTED PERSON OF THE INTENT TO REMOVE OR SUSPEND; AND

~~(e)~~(C) any other cause the department determines to be so serious and compelling as to affect responsibility as a state contractor, including removal by another governmental entity for any cause listed in the department's rules.

(4) The department shall issue a written decision to remove or suspend, stating the reasons for the action taken. A copy of the decision must be mailed or otherwise furnished immediately to the person involved.

NEW SECTION. Section 10. Remedies prior to and after award. (1) ~~The-provisions-of-this-section-apply-whenever-it-is-determined-administratively-or-upon-judicial-review--that~~ IF a solicitation or award of a contract is in violation of law, THE DEPARTMENT MAY APPLY THE REMEDIES PROVIDED IN

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SUBSECTIONS (2) AND (3).

(2) If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, the solicitation or proposed award must be:

(a) canceled; or

(b) revised to comply with the law.

(3) (a) If after an award it is determined that a solicitation or award of a contract is in violation of law and the person awarded the contract has not acted fraudulently or in bad faith, the contract may be:

(i) ratified and affirmed, provided it is determined that doing so is in the best interests of the state; or

(ii) terminated, and the person awarded the contract must be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to the termination.

(b) If after an award it is determined that a solicitation or award of a contract is in violation of law and the person awarded the contract has acted fraudulently or in bad faith, the contract may be:

(i) declared void; or

(ii) ratified and affirmed if such action is in the best interests of the state, without prejudice to the state's rights to appropriate damages.

(4) IN THE EVENT THE MATTER IS REVIEWED BY A COURT,

THE COURT MAY APPLY THE SAME REMEDIES PROVIDED IN SUBSECTIONS (2) AND (3).

NEW SECTION. Section 11. Collection of data concerning public procurement. All using agencies shall cooperate with the department in the preparation of statistical data concerning the procurement, usage, and disposition of all supplies and services, and the department may employ trained personnel as necessary to carry out this function. All using agencies shall furnish such reports as the department may require concerning usage, needs, and stocks on hand, and the department may prescribe forms to be used by the using agencies in requisitioning, ordering, and reporting of supplies and services.

NEW SECTION. Section 12. Definitions. As used in [sections 12 through ~~29~~ ~~38~~ 27], the following definitions apply:

(1) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of [sections 1 through ~~46~~ ~~48~~ ~~45~~], and a fee, if any.

(2) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or

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contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(3) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

(4) "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

(5) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(6) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance.

(7) "Responsive bidder" means a person who has submitted a bid which conforms in all material respects to the invitation for bids.

NEW SECTION. Section 13. Methods of source selection.

Unless otherwise authorized by law, all state contracts for supplies and services must be awarded by competitive sealed bidding, pursuant to [section 14], except as provided in 18-4-104; Title 18, chapter 5; Title 18, chapter 8; and [sections 15 through 17]. Supplies or services offered for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or services are regulated by the public service commission or other governmental authority.

NEW SECTION. Section 14. Competitive sealed bidding. (1) An invitation for bids must be issued and must include a purchase description and conditions applicable to the procurement.

(2) Adequate public notice of the invitation for bids must be given a reasonable time prior to the date set forth therein for the opening of bids, in accordance with rules adopted by the department. Notice may include publication in a newspaper of general circulation at a reasonable time prior to bid opening.

(3) Bids must be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. EACH BIDDER HAS THE RIGHT TO BE PRESENT, EITHER IN PERSON OR BY AGENT, WHEN THE BIDS ARE OPENED AND HAS THE RIGHT TO EXAMINE AND INSPECT ALL BIDS. The amount of each bid and such other relevant information

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as may be specified by rule, together with the name of each bidder, must be recorded. The record must be open to public inspection. After the time of award, all bids and bid documents must be open to public inspection in accordance with the provisions of 2-6-102.

(4) Bids must be unconditionally accepted without alteration or correction, except as authorized in [sections 1 through 46 48 45]. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life-cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. Only criteria set forth in the invitation for bids may be used in bid evaluation.

(5) Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on such bid mistakes may be permitted in accordance with rules adopted by the department. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the state or fair competition may be permitted. Except as

otherwise provided by rule, all decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes must be supported by a written determination made by the department.

(6) The contract must be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, including the preferences established by Title 18, chapter 1, part 1. If all bids exceed available funds as certified by the appropriate fiscal officer and the low responsive and responsible bid does not exceed such funds by more than 5%, the director or the head of a purchasing agency is authorized, in situations where time or economic considerations preclude resolicitation of a reduced scope, to negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder in order to bring the bid within the amount of available funds.

(7) When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers, to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the

first solicitation.

NEW SECTION. Section 15. Competitive sealed proposals. (1) When, under rules adopted by the department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the state, a contract may be entered into by competitive sealed proposals. The department may provide by rule that it is either not practicable or not advantageous to the state to procure specified types of supplies and services by competitive sealed bidding.

(2) Proposals must be solicited through a request for proposals.

(3) Adequate public notice of the request for proposals must be given in the same manner as provided in [section 14(2)].

(4) Proposals must be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals must be prepared in accordance with rules adopted by the department and must be open for public inspection after contract award.

(5) The request for proposals must state the relative importance of price and other evaluation factors.

(6) As provided in the request for proposals and under

rules adopted by the department, discussions may be conducted with responsible offerors who submit apparently responsive proposals for the purpose of clarification, to assure full understanding of and responsiveness to the solicitation requirements. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted, after submissions and prior to award, for the purpose of obtaining best and final offers. In conducting discussions, there may be no disclosure of any information derived from proposals submitted by competing offerors. The department may require the submission of cost or pricing data in connection with an award under this section.

(7) The award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price, including the preference in 18-1-102, and the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation. The contract file shall contain the basis on which the award is made.

NEW SECTION. Section 16. Small purchases. Any procurement not exceeding the amount established by rule may be made in accordance with small purchase procedures established by the department. Procurement requirements may

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not be artificially divided so as to constitute a small purchase under this section.

NEW SECTION. Section 17. Sole source procurement. A contract may be awarded for a supply or service item without competition when, under rules adopted by the department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines in writing that there is only one source for the required supply or service item. The department may require the submission of cost or pricing data in connection with an award under this section.

NEW SECTION. Section 18. Cancellation of invitations for bids or requests for proposals. An invitation for bids, a request for proposals, or other solicitation may be canceled or any or all bids or proposals may be rejected in whole or in part, as may be specified in the solicitation, when it is in the best interests of the state. The reasons therefor must be made part of the contract file.

NEW SECTION. Section 19. Nonresponsibility of bidders and offerors -- nondisclosure. (1) A written determination of nonresponsibility of a bidder or offeror must be made in accordance with rules adopted by the department. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination

of nonresponsibility with respect to such bidder or offeror.

(2) Information furnished by a bidder or offeror pursuant to this section may not be disclosed outside of the department or the purchasing agency without prior written consent by the bidder or offeror.

NEW SECTION. Section 20. Prequalification of suppliers. Prospective suppliers may be prequalified for particular types of supplies and services. Solicitation mailing lists of potential contractors must include but not be limited to such prequalified suppliers.

NEW SECTION. Section 21. Types of contracts. Subject to the limitations of this section, any type of contract that will promote the best interests of the state may be used, except that the use of a cost-plus-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the state than any other type or that it is impracticable to obtain the supplies or services required except under such a contract.

NEW SECTION. Section 22. Approval of accounting system. Except with respect to firm fixed-price contracts, no contract type may be used unless it has been determined in writing by the department that:

(1) the proposed contractor's accounting system will permit timely development of all necessary cost data in the

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form required by the specific contract type contemplated; and

(2) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

NEW SECTION. Section 23. Contract performance security. (1) For state contracts for the procurement of supplies and services, the department may in its discretion require the filing of security to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, materialmen, mechanics, and subcontractors.

(2) If contract performance security is required under subsection (1), the following types of security may be REQUIRED TO BE deposited with the state:

(a) a good and sufficient bond with a licensed surety company as surety;

(b) an irrevocable letter of credit NOT TO EXCEED $100,000 in accordance with the provisions of Title 30, chapter 5, part 1;

(c) lawful money of the United States;

(d) a cashier's check, certified check, bank money order, or bank draft, drawn or issued by any banking corporation incorporated under the laws of Montana or by a banking association located in Montana; or

(e) certificates of deposit or money market

certificates issued by any bank or savings and loan association licensed to do business in Montana.

(3) The amount AND TYPE of the security mentioned above must be ~~set in an amount considered~~ DETERMINED by the department to be sufficient to cover the risk involved to the state, except that the same shall not be less than 25% of the total contract price, and must be payable to the state of Montana. IN DETERMINING THE AMOUNT AND TYPE OF SECURITY REQUIRED FOR EACH CONTRACT, THE DEPARTMENT SHALL CONSIDER THE NATURE OF THE PERFORMANCE AND THE NEED FOR FUTURE PROTECTION TO THE STATE. THE DEPARTMENT MAY ADOPT RULES TO ASSIST IT IN MAKING THIS DETERMINATION AND IN PROTECTING THE STATE IN DEALING WITH IRREVOCABLE LETTERS OF CREDIT. Any contract security requirements must be included in the invitations for bids or requests for proposals.

(4) The provisions of Title 18, chapter 2, parts 2 and 3, do not apply to procurements under [sections 1 through 46 ~~48~~ 45].

NEW SECTION. Section 24. Contracts -- terms, extensions, and time limits. (1) Unless otherwise provided by law, no contract, lease, or rental agreement for supplies or services may be made for a longer period than 3 years; however, the department may contract for the lease or purchase of telecommunications equipment and systems and data processing equipment for a period not to exceed 10

years. A contract, lease, or rental agreement may be extended or renewed, notwithstanding the time limits stated in this section, if the terms of the extension or renewal, if any, are included in the solicitation and funds are available for the first fiscal period at the time of the agreement. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds therefor.

(2) Prior to the extension or renewal of a contract, it must be determined in writing that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled.

~~THERE IS A NEW SECTION THAT READS:~~

~~Section 25. Consultation with the legislature. Before entering into a contract, lease, or rental agreement for supplies or services for a period longer than 3 years and involving expenditures exceeding $25,000, the department or its designee shall inform and consult with the legislature if the legislature is in session or the legislative finance~~

~~committee if the legislature is not in session.~~

~~NEW SECTION. Section 26. Right to inspect plant. The state may at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor that is related to the performance of any contract awarded or to be awarded by the state.~~

~~NEW SECTION. Section 27. Finality of determinations. The determinations required by [sections 14(5), 15(1), 15(7), 17, 18, 19, 21, 22, and 24(2)] are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.~~

NEW SECTION. Section 25. Reporting of anticompetitive practices. If for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the attorney general by the department.

NEW SECTION. Section 26. Retention of procurement records. All procurement records must be retained, managed, and disposed of in accordance with Title 2, chapter 6.

NEW SECTION. Section 27. Records of sole source procurements. (1) The department shall maintain or shall require the head of a purchasing agency to maintain a record listing all contracts made under [section 17] for a minimum of 4 years. The record must contain:

(a) each contractor's name;

(b) the amount and type of each contract; and

(c) a listing of the supplies or services procured under each contract.

(2) The record must be available for public inspection.

NEW SECTION. Section 28. Definition. As used in [sections ~~30~~ ~~31~~ 28 through ~~33~~ ~~34~~ 31], "specification" means any description of the physical or functional characteristics or of the nature of a supply or service. It may include a description of any requirement for inspecting, testing, or preparing a supply or service for delivery.

NEW SECTION. Section 29. Duties of the department -- rules. (1) The department shall adopt rules governing the preparation, maintenance, and content of specifications for supplies and services required by the state.

(2) The department shall prepare, issue, revise, maintain, and monitor the use of specifications for supplies and services required by the state.

NEW SECTION. Section 30. Using agencies' advice. The director may obtain expert advice and assistance from personnel of using agencies in the development of specifications and may delegate in writing to a using agency the authority to prepare and utilize its own specifications.

NEW SECTION. Section 31. Competition. All specifications shall promote overall economy for the

purposes intended and encourage competition in satisfying the state's needs and may not be unduly restrictive.

NEW SECTION. Section 32. Contract clauses -- rules. (1) The department may adopt rules permitting or requiring the inclusion of clauses providing for adjustments in prices, time of performance, or other appropriate contract provisions relating to the following subjects:

(a) the unilateral right of the state to order in writing:

(i) changes in the work within the scope of the contract; and

(ii) temporary work stoppage or delay of performance; and

(b) variations occurring between estimated quantities of work in a contract and actual quantities.

(2) Adjustments in price pursuant to clauses established under subsection (1) must be computed in one or more of the following ways:

(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(b) by unit prices specified in the contract or subsequently agreed upon;

(c) by the costs attributable to the events or situations under such clauses with adjustment of profit or

fee, all as specified in the contract or subsequently agreed upon;

(d) in such other manner as the contracting parties may mutually agree; or

(e) in the absence of agreement by the parties, by a unilateral determination by the state of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the state in accordance with applicable sections of the rules adopted under [section ~~35~~ 36 33].

(3) The department may adopt ~~rules, including but not limited to~~ rules permitting or requiring the inclusion in state contracts of clauses providing for appropriate remedies and relating to the following subjects:

(a) liquidated damages, as appropriate;

(b) specified excuses for delay or nonperformance;

(c) termination of the contract for default; and

(d) termination of the contract, in whole or in part, for the convenience of the state.

(4) The director or the head of a purchasing agency may vary the clauses established by the department under subsections (1) and (3) for inclusion in any particular state contract. Any variations must be supported by a written determination that states the circumstances justifying such variation. Notice of any material variation

must be stated in the invitation for bids or request for proposals.

NEW SECTION. Section 33. Cost principles -- rules. The department shall adopt rules setting forth cost principles which must be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions that provide for the reimbursement of costs. However, if a written determination is approved at a level above the procurement officer, such cost principles may be modified by contract.

NEW SECTION. Section 34. Definitions. As used in [sections ~~36~~ 37 34 through ~~38~~ 39 36], the following definitions apply:

(1) "Supplies" means supplies owned by the state.

(2) "Surplus supplies" means any supplies having a remaining useful life but that are no longer required by the using agency in possession of them. This includes obsolete supplies, scrap materials, and supplies that have completed their useful life cycle.

NEW SECTION. Section 35. Supply management rules. (1) The department shall adopt rules governing:

(a) the management of supplies during their entire life cycle;

(b) the sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other

appropriate method designated by rule;

(c) transfer of surplus supplies.

(2) No employee of the owning or disposing agency directly involved with the disposal may purchase supplies sold by his agency.

NEW SECTION. Section 36. Allocation of proceeds. Proceeds from the sale, lease, or disposal of surplus supplies must be allocated as provided by 18-6-101, less a reasonable handling fee.

NEW SECTION. Section 37. Definitions. As used in [sections ~~39~~ ~~40~~ 37 through ~~45~~ ~~46~~ 43], the following definitions apply:

(1) "Cooperative purchasing" means procurement conducted by or on behalf of more than one public procurement unit.

(2) "Local public procurement unit" means a county, city, town, or other subdivision of the state or a public agency of any such subdivision; public authority; educational, health, or other institution; to the extent provided by law, any other entity that expends public funds for the procurement of supplies and services; and any nonprofit corporation operating a charitable hospital.

(3) "Public procurement unit" means a local or state public procurement unit of this or any other state, including an agency of the United States.

(4) "State public procurement unit" means a state department, agency, or official that expends public funds for the procurement of supplies and services.

NEW SECTION. Section 38. Cooperative purchasing authorized. The department may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies or services with one or more public procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include ~~but--is--not--limited--to~~ joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts that are made available to local public procurement units.

NEW SECTION. Section 39. Sale, acquisition, or use of supplies by a public procurement unit. The department may sell to, acquire from, or use any supplies belonging to another public procurement unit independent of the requirements of [sections 12 through ~~29~~ ~~30~~ ~~and--36~~ ~~37--through~~ ~~38~~ ~~39~~ 27].

NEW SECTION. Section 40. Cooperative use of supplies or services. The department may enter into an agreement, independent of the requirements of [sections 12 through ~~29~~ ~~30~~ ~~and--36~~ ~~37~~ ~~through--38~~ ~~39~~ 27], with any other public procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

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NEW SECTION. Section 41. Joint use of facilities. The department may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit under the terms agreed upon between the parties.

NEW SECTION. Section 42. Information and services -- fees. (1) Upon request, the ~~director~~ DEPARTMENT may make available to public procurement units certain services, including but not limited to the following:

(a) standard forms;

(b) printed manuals;

(c) product specifications and standards;

(d) quality assurance testing services and methods;

(e) qualified products lists;

(f) source information;

(g) common use commodities listings;

(h) supplier prequalification information;

(i) supplier performance ratings;

(j) debarred and suspended bidders lists;

(k) forms for invitations for bids, requests for proposals, instructions to bidders, general contract provisions, and other contract forms;

(l) contracts or published summaries thereof, including price and time of delivery information; and

(m) cooperative purchasing.

(2) The state, through the ~~director~~ DEPARTMENT, may provide technical services, including but not limited to the following:

(a) development of product specifications;

(b) development of quality assurance test methods, including receiving, inspection, and acceptance procedures;

(c) use of product testing and inspection facilities; and

(d) use of personnel training programs.

(3) The ~~director~~ DEPARTMENT may enter into contractual arrangements and publish a schedule of fees for the services provided under subsections (1) and (2). Such fees may be used by the department to offset costs incurred in providing such services.

NEW SECTION. Section 43. Review of procurement requirements. To the extent possible, the ~~director~~ DEPARTMENT may collect information concerning the type, cost, quality, and quantity of commonly used supplies or services being procured or used by state public procurement units. ~~The director may also collect such information from local public procurement units.~~ The ~~director~~ DEPARTMENT may make available all such information to any public procurement unit upon request.

NEW SECTION. Section 44. Application. (1) Except as provided in [section 24], which applies retroactively to

telecommunications equipment and systems and data processing equipment acquired under existing contracts, leases, or rental agreements, and subject to the terms of such agreements, [sections 1 through 46 48 45] apply only to contracts solicited or entered into after January 1, 1984, unless the parties agree to its application to a contract solicited or entered into prior to January 1, 1984.

(2) [Sections 1 through 46 48 45] apply to expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body, as defined in [section 3], under any contract; but [sections 1 through 46 48 45] do not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in [sections 39 48 37 through 45 46 43]. [Sections 1 through 46 48 45] also apply to the disposal of state supplies. Nothing in [sections 1 through 46 48 45] or in rules adopted thereunder prevents any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(3) [Sections 1 through 46 48 45] do not apply to the construction ~~of public works~~ CONTRACTS.

THERE IS A NEW MCA SECTION THAT READS:

Section 45. Local government adoption of procurement

provisions. A political subdivision or school district may adopt any or all parts of [sections 1 through 48 45] and the accompanying rules promulgated by the department.

~~NEW SECTION. Section 49. Performance within state of public printing, binding, and stationery work exceptions. (1) Except as provided in subsections (2) and (5), all printing, binding, and stationery work for the state of Montana must be performed within the state. All invitations for bids, requests for proposals, and contracts for such work must so stipulate.~~

~~(2) The work referred to in subsection (1) may be performed outside the state if it is established that:~~

~~(a) the work cannot be performed within the state;~~

~~(b) the lowest price for which the work can be procured within the state exceeds the charge usually and customarily made to private individuals and corporations for work of similar character and quality; or~~

~~(c) all bids or proposals for the work or any part thereof are excessive and not reasonably competitive.~~

~~(3) No payment may be made by the state for printing, binding, or stationery work unless the work is done within the state or is authorized to be done outside the state pursuant to subsection (2).~~

~~(4) All contracts for work to be performed outside the state under subsection (2) must require that such work be~~

~~performed under conditions which substantially conform to the laws of this state regarding conditions of employment, hours of labor, and minimum wages. Violation of the provisions of this subsection is cause for cancellation of the contract.~~

~~(5) The publication of the Montana Code Annotated, as provided in 1-11-301 through 1-11-304, as amended, is exempt from the requirements of this section.~~

THERE IS A NEW MCA SECTION THAT READS:

Section 46. State printing, binding, and stationery work -- resident preference. All printing, binding, and stationery work for the state of Montana, except the Montana Code Annotated and certificates of appointment and election to office, must be printed in the state of Montana by a responsible bidder if his bid does not exceed the lowest bid by a nonresident printer by more than the percentage in 18-1-102.

Section 47. Section 18-4-104, MCA, is amended to read:

"18-4-104. Purchases exempt from general requirements. (1) Fresh fruits and vegetables (other than potatoes) shall not be included in the supplies to be purchased as provided in ~~this chapter~~ [sections 1 through ~~46~~ 48 45]. The department may allow a state agency or institution to purchase fresh fruits and vegetables. An itemized account shall be kept of these purchases and the account shall be

furnished to the department.

(2) Likewise, when immediate delivery of articles or performance of service is required by the public exigencies, the articles or service so required may be procured by open purchase or contract at the place and in the manner in which the articles are usually bought and sold or the services engaged between individuals but under the direction of the department.

(3) The department of administration may exempt the department of institutions from the provisions of ~~part 4 of this chapter~~ [sections 1 through ~~46~~ 48 45] for the purchase of suitable clothing by the department of institutions for residents of its institutions and community-based programs.

(4) As used in this section, "suitable clothing" means styled, seasonable clothing, which will allow the resident to make a normal appearance in the community."

Section 48. Section 18-7-104, MCA, is amended to read:

"18-7-104. Union label. All printing for which the state of Montana is chargeable shall bear the label of the branch of the international typographical union, the allied printing trades council, or the amalgamated lithographers of America of the locality in which it is printed, except under the following conditions. Printing firms not having the use of the labels and who are desirous of presenting bids for printing as enumerated above shall be required to establish

consideration as a responsible bidder as follows:

(1) As a condition to consideration as a responsible bidder, printing concerns must file with the secretary of state a sworn statement to the effect that employees in the employ of the concern which is to produce such printing are receiving the prevailing wage rate and are working under conditions prevalent in the locality in which the work is produced.

(2) Whenever a collective bargaining agreement is in effect between an employer and employees who are represented by a responsible organization which is in no way influenced or controlled by the management, such agreement and its provisions shall be construed as conditions prevalent in said locality and shall be the minimum requirement for being adjudged a responsible bidder under ~~18-7-103~~ [sections 1 through 46-48 45], [section 47-49 46], or 18-7-104.

(3) Printing firms having the use of the union labels as set forth above shall be deemed as having complied with the provisions of ~~18-7-103~~ [sections 1 through 46-48 45], [section 47-49 46], or 18-7-104, but nothing in these provisions shall be construed as exempting such bidders from any provisions of ~~18-7-103~~ [sections 1 through 46-48 45], [section 47-49 46], or 18-7-104, and such bidders shall also be required to conform to all provisions thereof."

Section 49. Section 18-7-105, MCA, is amended to read:

"18-7-105. Penalty. Any officer of the state who shall accept any printed matter, ~~except certificates named in 18-7-103~~, for which the state is chargeable in whole or in part or who is found to have had printed matter produced, under conditions other than as set forth in ~~18-7-103~~ [sections 1 through 46-48 45], [section 47-49 46], or 18-7-104 shall be subject to a fine of $50 for each and every offense."

Section 50. Section 87-1-209, MCA, is amended to read:

"87-1-209. Acquisition and sale of lands or waters. (1) The department, with the consent of the commission and, in the case of land acquisition involving more than 100 acres or $100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

(a) for fish hatcheries, nursery ponds, or game farms;

(b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) for public hunting, fishing, or trapping areas;

(d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing

animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

(e) for state parks and outdoor recreation;

(f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The department, with the consent of the commission, may acquire by condemnation lands or structures for the preservation of historical or archaeological sites that are threatened with destruction or alteration.

(3) (a) The department, with the consent of the commission, may dispose of lands and waters acquired by it on those terms after that public notice, without regard to other laws which provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable.

(b) Notice of sale describing the lands or waters to be disposed of shall be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if no newspaper is published in that county, then in any newspaper with general circulation in that county.

(c) The notice shall advertise for cash bids to be presented to the director within 30 days from the date of the first publication. Each bid must be accompanied by a

cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid shall be accepted upon payment of the balance due within 10 days after mailing notice by registered or certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders shall be similarly notified in succession until a sale is completed. Deposits shall be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids which do not equal or exceed the full market value of the lands and waters as determined by the department. The department shall convey the lands and waters without covenants of warranty by deed executed by the governor or in his absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(4) ~~Notwithstanding the provisions of 18-4-102, the~~ The department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas, in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish, and areas which provide access to fishing sites for the public. In no case may the total cost of such installment contracts exceed the

cost of purchases authorized by the department and appropriated by the legislature."

NEW SECTION. Section 51. Codification instruction. Sections 1 through ~~46~~ 48 45 are intended to be codified as an integral part of Title 18, and the provisions of Title 18 apply to sections 1 through ~~46~~ 48 45. Section ~~47~~ 49 46 is intended to be codified as an integral part of Title 18, chapter 7, and the provisions of Title 18, chapter 7, apply to section ~~47~~ 49 46.

NEW SECTION. Section 52. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 53. Repealer. Sections 18-4-101, 18-4-102, 18-4-201 through 18-4-203, 18-4-211 through 18-4-214, 18-7-102, 18-7-103, and 18-7-111 through 18-7-113, MCA, are repealed.

NEW SECTION. Section 54. Effective date. ~~This~~ (1) EXCEPT FOR SECTIONS 24 AND ~~47~~ 44, THIS act is effective January 1, 1984.

(2) SECTIONS 24 AND ~~47~~ 44 ARE EFFECTIVE ON PASSAGE AND APPROVAL.

-End-